

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review – Review	)	MB Docket No. 06-121
of the Commission’s Broadcast Ownership	)	
Rules and Other Rules Adopted Pursuant to	)	
Section 202 of the Telecommunications	)	
Act of 1996	)	
	)	
2002 Biennial Regulatory Review – Review	)	MB Docket No. 02-277
of the Commission’s Broadcast Ownership	)	
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Cross-Ownership of Broadcast Stations	)	MM Docket No. 01-235
and Newspapers	)	
	)	
Rules and Policies Concerning Multiple	)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations	)	
in Local Markets	)	
	)	
Definition of Radio Markets	)	MM Docket No. 00-244

**COMMENTS OF MEDIA GENERAL, INC.**

**(Volume 1: Comments and Appendices 1-8)**

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## **SUMMARY**

Thirty-two years is a long time to ban an entire industry from entering a market based on nothing more than a conjectural “hoped-for” gain in diversity. Yet, by the time the Commission acts in this proceeding, that is how long the newspaper industry will have been prohibited by the newspaper/broadcast cross-ownership rule (“1975 Rule”) from owning broadcast television stations. Given rapidly advancing technological changes that increasingly point to the 1975 Rule as a mistaken relic of media history, the time is long overdue to eliminate it in all markets.

This result is absolutely compelled by dramatic changes in the last three decades in the media marketplace, particularly the heightened competition for audiences recently spawned by a new profusion of digital media sources. This digital competition has hastened the fragmentation of audiences, further undermining the economic model upon which free, local television news and other local content is premised. At the same time, numerous empirical studies evidence the public interest benefits of cross-ownership.

The 1975 Rule stands alone as the only ownership rule that restricts the activity of an industry that the FCC does not regulate, the newspaper industry. This discriminatory treatment of newspaper owners vis-à-vis other regulated media players, which now face lessened or no ownership restrictions, and vis-à-vis all unregulated competitors, which may buy broadcast stations at will, must cease.

The FCC took a very positive step in 2003 when it eliminated the 1975 Rule, only to have that action stayed based on judicial concerns over the metric used to craft a liberalized replacement. In 2003, the FCC determined that the 1975 Rule was no longer necessary in the public interest for three reasons: it did not promote competition in local markets since advertisers viewed newspaper and broadcast advertising as imperfect substitutes; it undermined

localism by preventing efficient combinations that allowed for the creation and dissemination of high-quality local news; and the FCC lacked sufficient evidence of any link between diversity of ownership and diversity of viewpoint to sustain the ban. The Third Circuit affirmed repeal of the 1975 Rule, finding the Commission's determination reasonable. In addition, it noted that no party on appeal had even challenged the FCC's determination that restrictions were unnecessary to protect competition, and it agreed with the FCC that common ownership promotes localism. Consequently, legal questions regarding the merit of the 1975 Rule itself and regarding whether restrictions are necessary to protect competition or promote localism are no longer "on the table."

At least seven empirical studies show that newspaper/broadcast cross-ownership results in increased quantity and higher quality news and public interest programming. One study, for instance, prepared by Media General in 2001 and updated this year, found that, when the quantity of non-entertainment programming presented by all stations in medium and small-sized cross-owned markets was compared to the average for all stations in the next largest DMA, the stations in the markets with common ownership tended to broadcast considerably more non-entertainment programming. The Commission's own staff study, which was prepared in 1973 at the time the 1975 Rule was under consideration, found similar results.

Diversity of ownership never did and now clearly does *not* bear an empirically established, and therefore credible, link to diversity of viewpoint. These comments supply numerous examples from the 2004 Presidential election in which the outlets of large to mid-sized media companies took positions in their editorial endorsements that varied from other outlets of the company; the pattern is repeated in state races. Nonetheless, if the FCC continues to analyze a cross-ownership restriction in terms of diversity, it will find that such a restriction prevents

newspapers from helping to benefit local television news operations, too many of which over the last several years have had to cut back or go dark due to escalating expenses of local news production, the high cost of the DTV transition, and the loss of network compensation -- all in the face of fragmenting audiences.

The FCC has no choice under governing statutory and constitutional standards except to eliminate all cross-ownership restrictions. Section 202(h) of the 1996 Act requires the FCC to review its ownership rules to determine whether they are “necessary” in the public interest as the result of competition and then repeal or modify any it finds are no longer in the public interest. Even under the most deferential interpretation of “necessary” imaginable, the intense and profound competition from new digital sources and the threat they portend to the continued provision of free and local content compel total repeal of the 1975 Rule under Section 202(h). This result comports with the deregulatory thrust of the Act, the intent of Section 202 as a whole, and judicial interpretation of Section 202 and similar provisions.

Because the rationale of “spectrum scarcity,” which previously shielded the 1975 Rule from thorough First Amendment review, has been discredited by Congress, most lower federal courts, and, in other contexts, the FCC itself, any restriction on cross-ownership can no longer pass muster under the searching First Amendment standard of strict, or even intermediate, scrutiny. Any cross-ownership restraint also fails when measured against the Equal Protection standards of the Constitution because it lacks an overriding purpose, or even a rational basis, for restricting broadcasters from owning newspapers in their home markets and newspapers from owning broadcast stations in their home markets, when other media owners do not face comparable restraints.



The established benefits from eliminating any newspaper/broadcast cross-ownership restriction should be available in all markets, large and small. The empirical studies in the record show absolutely no reason to differentiate or draw a line based on market size. Not only is good local journalism expensive to produce and deliver in all markets, but local media players, such as Media General, face increasing competition for audience and advertisers from large national entities, some of which are regulated by the FCC, and other newer entrants which operate totally unfettered by FCC restrictions. Equally important, locally-focused media in small markets and the consumers that they serve are just as entitled to the demonstrated benefits of common ownership as their counterparts in larger markets.

For over three decades, continuation of the ban on cross-ownership has depended on a number of myths. Rather than look to those who, without empirical evidence, continue to ply these myths, the FCC should focus on the real world practices and difficulties of the broadcast stations it regulates. These realities and the public interest, particularly the public interest in guaranteeing the provision of free local news and content, compel the complete elimination of a restriction on newspaper/broadcast cross-ownership.

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**COMMENTS OF MEDIA GENERAL, INC.**

For the third time in five years, Media General, Inc. (“Media General”), by its attorneys and in response to the *Further Notice of Proposed Rulemaking* released in the above-referenced proceedings,<sup>1</sup> hereby submits its Comments and urges prompt and total elimination in all markets of any restriction on the cross-ownership of daily newspapers and broadcast stations. The current restriction, which is embodied in Section 73.3555(d) of the FCC’s rules, flatly bans such

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<sup>1</sup> 2006 *Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket Nos. 06121 and 02-277, and MM Docket Nos. 01-235, 01-317, and 00-244, FCC 06-

cross-ownership in any markets. Adopted in 1975, it has remained unchanged to this date (the “1975 Rule”).<sup>2</sup>

## **I. Introduction.**

Media General is an independent, publicly owned communications company situated primarily in the southeastern United States with interests in newspapers, television stations, and interactive media. Its corporate mission is to be the leading provider of high-quality news, information, and entertainment in the Southeast by continually building on its position of strength in strategically located markets.

Media General’s publishing assets have grown from three daily newspapers as recently as 1995 to 25 today; they include *The Tampa Tribune*, the *Richmond Times-Dispatch*, the *Winston-Salem Journal*, and 22 other daily newspapers in Virginia, North Carolina, Florida, Alabama, and South Carolina, and more than 150 weeklies and other publications.<sup>3</sup> From a base of three television stations at the beginning of 1997, Media General’s 23 network-affiliated stations today reach more than 33 percent of the television households in the Southeast, and nearly 10 percent

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93, 21 FCC Rcd 8834 (2006) (“*Ownership FNPRM*”). The FCC extended the deadline for the filing of initial comments until today. *Order*, DA 06-1663, released September 18, 2006.

<sup>2</sup> 47 C.F.R. 73.3555(d) (2002). *See* Amendment of Section 73.34 [sic], 73.240, and 73.636 of the Commission’s Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations, *Second Report and Order*, 50 FCC 2d 1046, *recon.* 53 FCC 2d 589 (1975) (“*1975 Second Report and Order*”), *modified by Nat’l Citizens Committee for Broad. v. FCC*, 555 F.2d 938 (D.C. Cir. 1977), *aff’d in part and rev’d in part*, *FCC v. Nat’l Citizens Committee for Broad.*, 436 U.S. 775 (1978) (“*NCCB*”).

Some have traced the origin of the rule to political difficulties the Washington Post Co., then an owner of broadcast outlets, including in Washington, D.C., had in the 1970s with the Nixon Administration over the newspaper’s coverage of Watergate. Regulations advanced by one political party, ostensibly to contract the power of the allegedly liberal media, have become sacrosanct to another political party. *See* “Old Rules, New Alliances,” *CongressDailyAM*, July 31, 2006.

<sup>3</sup> For a full list of Media General’s daily newspapers, *see* Appendix 1.

of those in the United States.<sup>4</sup> The company's interactive media assets include more than 75 online enterprises that are associated with its newspapers and television stations.

Media General is one of the media industry's leading practitioners of "convergence," the melding of newspaper, television, and online resources in the gathering and reporting of local news. Its Tampa News Center, located in the 12th ranked Designated Market Area ("DMA"), is the most advanced convergence laboratory in the nation, and the only one where a newspaper, a television station, and an online division are housed together under one roof. Further convergence efforts exist in five additional Media General markets -- Roanoke-Lynchburg, Virginia, the 68th-ranked DMA; Tri-Cities, Tennessee/Virginia, the 91st-ranked DMA; Myrtle Beach-Florence, South Carolina, the 107th-ranked DMA; Columbus, Georgia, the 127th-ranked DMA; and Panama City, Florida, the 157th-ranked DMA.<sup>5</sup>

Media General's interests in *The Tampa Tribune* and WFLA-TV date to 1965 and are grandfathered under the 1975 Rule. Its efforts at convergence there began in the mid-1990s when the WFLA-TV news director and *The Tampa Tribune*'s sports department began to take a coordinated approach to covering local high school football and other sports. Shortly thereafter, the two platforms began sharing expensive political polling information and joining forces to provide enhanced political coverage by staging local events like candidate debates and "Town Halls," and the paper's religion columnist began making on-air reports on WFLA-TV. The response from the community and advertisers was so overwhelmingly positive that in 2000, when it came time to build new digital television facilities, Media General moved the staffs of all three Tampa platforms into a new \$35 million state-of-the-art facility, The News Center.

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<sup>4</sup> For a full list of Media General's television stations, *see* Appendix 2.

<sup>5</sup> "Nielsen Media Research Local Market Universe Estimates," as of Jan. 1, 2006, available at <http://www.nielsenmedia.com/DMA.html>.

Building on the success of its convergence efforts in Tampa, Media General established newspaper/broadcast cross-ownerships in the other five DMAs noted above between 1997 and 2000. In four of the five cases, it did so pursuant to footnote 25 of the *1975 Second Report and Order*, which permits a broadcast station licensee to purchase a newspaper in the same community where it already operates a television station and to own the two properties for one year or until the time of its next renewal date, whichever is longer.<sup>6</sup> As discussed below in Section III, since these cross-ownerships were established, they have delivered an unparalleled increase in local news and information to their communities -- better, faster, and deeper news content.

The 1975 Rule is the only FCC media ownership rule that has gone unmodified for over three decades. During the last 10 years, in particular, the FCC has agreed repeatedly that relief from the 1975 Rule is long overdue, deciding in July 2003 that a complete ban should be eliminated, only to have that action stayed and then affirmed, but stayed again, on review by the United States Court of Appeals for the Third Circuit.<sup>7</sup>

As shown below in Section IV, during the last three decades while newspaper and broadcast owners have been flatly prohibited from combining their properties in cross-ownerships, their competitors have grown and prospered, and they now provide a profusion of

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<sup>6</sup> *1975 Second Report and Order*, 50 FCC 2d at 1076 n. 25. In the case of the fifth convergence market in the Roanoke, Virginia DMA, the Grade A contour of WSLS-TV in Roanoke does not encompass the communities of Lynchburg and Danville, Virginia, in which Media General's daily newspapers are published; the 1975 Rule is thus not implicated.

<sup>7</sup> 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Report and Order and Notice of Proposed Rulemaking*, 18 FCC Rcd 13620 (2003) ("*July 2003 Decision*"), *aff'd and remanded sub nom., Prometheus Radio Project v. FCC*, 373 U.S. 372 (3d Cir. 2004) ("*Prometheus*"), *cert. denied, Media General, Inc. v. FCC*, 545 U.S. 1123 (2005).

Attached as Appendix 3 is a review of the FCC's consideration of the 1975 Rule over the last decade.

diverse content across the country -- and in Media General's six convergence markets, in particular. Indeed, in the past three years since the FCC decided the 1975 Rule no longer served the public interest, there has been the most intense boom to date in alternative and highly diverse sources of entertainment, news, and information; content providers have discovered the unlimited portals available through web and broadband platforms. These newer content providers can bypass newspaper and television platforms entirely.

As was true in the extensive proceedings that led to the FCC's *July 2003 Decision*, no legal or factual justification remains for retaining any vestige of the 1975 Rule. Indeed, numerous reasons, discussed below, compel its immediate elimination in all markets, large and small. The 1975 Rule no longer serves the public interest but harms it. The Commission should act promptly to make sure no newspaper/broadcast cross-ownership restriction remains.

## **II. The Commission Has No Authority To Retain the 1975 Rule and No Evidence on Which To Base a Decision That Regulation of Newspaper/Broadcast Cross-Ownership Is Required To Protect Competition or Promote Localism.**

Based on FCC findings and the United States Court of Appeals for the Third Circuit's affirmance of those findings, several points are no longer at issue in this proceeding: (i) should the FCC retain the 1975 Rule and its wholesale ban on newspaper/broadcast cross-ownership?; (ii) is any cross-ownership restriction needed to protect competition?; and (iii) is any cross-ownership restriction necessary in the interest of localism? Given the history that precedes this rulemaking, these issues have been conclusively decided. They are "off the table."

First, in the *July 2003 Decision*, the FCC determined that the 1975 Rule was no longer necessary in the public interest for three reasons: (i) the ban is not necessary to promote competition in local markets because most advertisers do not view newspapers and broadcast

stations as close substitutes;<sup>8</sup> (ii) the ban undermines localism by preventing efficient combinations that would allow for the production of high-quality local news;<sup>9</sup> and (iii) insufficient evidence exists to conclude that ownership influences viewpoint to warrant a blanket cross-ownership ban, thus making it indefensible on diversity grounds.<sup>10</sup> The United States Court of Appeals for the Third Circuit affirmed the FCC's repeal of the wholesale ban, finding that the Commission's determinations on each of these points were reasonable.<sup>11</sup> As a result, whether the former wholesale ban has any merit whatsoever is a subject no longer open for debate.

Second, in reaching its conclusion that the ban was no longer needed for competitive reasons, the FCC made extensive findings about the lack of substitutability between newspaper and broadcast advertising.<sup>12</sup> No matter whether the advertising was national or local in nature, the FCC said these two products -- newspaper advertising and broadcast advertising -- were imperfect substitutes.<sup>13</sup> In its decision, the FCC could not have been clearer in its fundamental determination that "[a] newspaper-broadcast combination therefore . . . cannot adversely affect competition in any product market."<sup>14</sup> As the Third Circuit recognized, no party challenged this determination.<sup>15</sup> In the *July 2003 Decision*, the FCC also recognized that, if there is any unique

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<sup>8</sup> *July 2003 Decision*, 18 FCC Rcd at 13749.

<sup>9</sup> *Id.* at 13754.

<sup>10</sup> *Id.* at 13764-13765.

<sup>11</sup> *Prometheus*, 373 F.3d at 398-400.

<sup>12</sup> *July 2003 Decision*, 18 FCC Rcd at 13749-13752.

<sup>13</sup> *Id.* at 13751.

<sup>14</sup> *Id.* at 13749.

<sup>15</sup> *Prometheus*, 373 F.3d at 398.

group of advertisers “that benefit from using various media to advertise their products,” federal and state antitrust remedies are adequate to protect these business interests.<sup>16</sup>

Third, the issue of whether any newspaper/broadcast cross-ownership restriction is necessary to ensure localism has been resolved. As the FCC found in 2003, the 1975 Rule “is not necessary to promote broadcasters’ provision of local news and information programming and . . . *the rule actually works to inhibit such programming.*”<sup>17</sup> The United States Court of Appeals for the Third Circuit found the evidence upon which the FCC relied in this regard -- the FCC’s Media Ownership Working Group Study (“The Measurement of Local Television News and Public Affairs Programs”) and findings by the Project for Excellence in Journalism -- persuasive support on this issue. The Third Circuit agreed with the FCC that newspaper/broadcast combinations promote localism.<sup>18</sup> After five years of studying the problem, concluding that common ownership promotes localism, and receiving court affirmance, neither the Commission nor any party can contend that this issue remains open for debate.

### **III. Without Question, Media General’s Convergence Properties Deliver Exceptional Levels of High Quality Local News and Provide Unparalleled Public Service to Their Communities.**

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#### **A. Media General’s Three Media Platforms in Tampa Provide Tangible Evidence of the Benefits of Convergence.**

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As described above, full convergence at Media General began in earnest over five years ago, when WFLA-TV, *The Tampa Tribune*, and Media General-owned Tampa Bay Online (“TBO.com”) moved their news staffs and content operations into a new \$35 million state-of-the-art facility, The News Center. As discussed in the very detailed report of Professor Adam

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<sup>16</sup> *July 2003 Decision*, 18 FCC Rcd at 13752-53.

<sup>17</sup> *July 2003 Decision*, 18 FCC Rcd at 13753-13760 (emphasis supplied).

<sup>18</sup> *Prometheus*, 373 F.3d at 398-99.



Clayton Powell III, attached as Appendix 4A,<sup>19</sup> each of the three platforms has its own specific news and editorial staffs that make independent, final decisions about content. These three staffs work together at a central news desk, facilitating the rapid exchange of story ideas, news content, and video images. All three platforms also maintain their own news “budgets” (compilations of planned stories on a building-wide “intranet”) and the staffs of each platform can access the news “budgets” of the other properties. Moreover, it has become commonplace that newspaper reporters write scripts for television newscasts and appear on-air, and television reporters write stories that are published in the newspaper. The newspaper also makes its archives available to the other two platforms. With the provision of special equipment to the photographers of all three platforms, *The Tampa Tribune* and TBO.com have been able to add pictures to stories that otherwise would have been only text, including aerial footage obtained from WFLA-TV’s helicopter. Similarly, *The Tampa Tribune*’s photojournalists have been able to provide WFLA-TV with video footage for airing on its newscasts.

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<sup>19</sup> Statement of Professor Adam Clayton Powell, III, at Appendix 4A (“*Powell*”), Exhibit A (Tampa). As described in the C.V. attached to his Statement, Professor Powell has had a long and distinguished career working in and studying broadcast news. He is currently the Director of the Integrated Media Systems Center, the National Science Foundation’s Engineering Research Center for Multimedia Research at the University of Southern California’s Viterbi School of Engineering. Within the last year, he authored a book on local news entitled *Reinventing Local News: Connecting Communities Through Technologies*.

The detailed reports that Professor Powell prepared on each of Media General’s markets are attached to his Statement as Exhibits A through F and included in Volume 2 of these Comments. The review of the local convergence benefits in each of Media General’s convergence markets, which is summarized in these Comments, is based on information in Professor Powell’s Statement and the related Exhibits.

Attached as Appendix 4B is the Statement of Professor Sree Sreenivasan of the Columbia Graduate School of Journalism. Professor Sreenivasan reports that journalism schools have now recognized that the coverage and delivery of local news has changed, due to audience demands and the competition from numerous new diverse sources of content. These schools, on which he reports in his Statement, now teach a multi-platform approach to journalism, an approach like that followed by Media General in Tampa and its other convergence markets and one that the

As Professor Powell describes, the pooling of news-gathering resources has significantly increased the output of news content and ensured the delivery of better, faster, and deeper news in Tampa. These improvements can be seen in at least four areas -- breaking news, expanded news content, investigative and enterprise pieces, and greater understanding of the community. First, with convergence have come “more eyes, more ears, and more mouths” on the street, meaning, as Professor Powell explains, Media General’s platforms are that much more likely to learn of breaking news developments and disseminate them quickly. Recent examples that are discussed in detail by Professor Powell and that demonstrate how the resources of multiple platforms can lead to more extensive and immediate coverage of local news, include the reporting on a trial of an accused child abductor, a hostage situation that snarled traffic on a major Tampa-area route throughout the day, and the release by the Tampa Bay Buccaneers of one of the area’s most popular sports figures.

Second, expanded and more in-depth coverage of the market has flowed naturally from these convergence efforts. As is common in the industry, *The Tampa Tribune* has approximately six times the number of reporters that WFLA-TV has, even though the station has a staff that is typical for large market network affiliated television stations. With convergence, WFLA-TV gains access to the newspaper’s reporters who cover beats and have areas of expertise far beyond those the television station’s staff can cover or develop. For example, *The Tampa Tribune*’s real estate reporter provides on-air reports on local real estate issues for WFLA-TV, and *Tribune* reporters who cover other business-related topics report on those issues on-air. These *Tribune* reporters have recently provided on-air reports on WFLA-TV on the growing trend in

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school’s students are demanding and finding essential as they take their first jobs at television stations, newspapers, and other media around the country.

condominium conversions in the Tampa Bay area and the migration of a number of high technology companies north to Pasco County.

Third, as Professor Powell explains, the three outlets have joined forces to produce specials and investigative reports that none of them could have done alone. In the past year, they jointly investigated the hurricane-preparedness plans of Tampa area governments and provided investigative and special reports on the actions of a possible serial rapist in nearby Ybor City. In the wake of Hurricane Katrina, *Tribune* reporters traveled the backroads of Mississippi and Louisiana delivering different reports to all three platforms that described the impact of the storm on small towns and their historical sites. Shortly thereafter, the WFLA-TV anchors, in turn, traveled to Iraq, Afghanistan, and Germany to report for all three outlets on the experiences of local troops serving in those areas. Professor Powell describes how these investigative and enterprise pieces were presented variously over the three platforms.

Fourth, Professor Powell describes how “better sourcing” and access to more leaders and community institutions achievable through three sets of reporters allow the platforms to provide improved depth, understanding, and sensitivity in their coverage of diverse stories about the community. These same factors also aid the platforms in presenting more solutions to community problems. Examples include a series on the experiences of parents who have lost children to cancer and the tragedy that struck Indianapolis Colts football coach Tony Dungy and his Tampa-based family when his son committed suicide. By working together, the three platforms similarly have gained better access to political candidates and government officials. Together, they have conducted their own joint polls, held “Town Hall” meetings, and organized other events, such as health fairs and community telephone banks that would not have been feasible without common ownership.

These combined efforts have not resulted in staff reductions in Tampa, either overall or in news operations. Since 2000, when The News Center opened, overall employment at WFLA-TV and employment in the station's newsroom have increased. This should not be surprising since WFLA-TV's local news output also has increased by 30 minutes each weekday.

Higher quality local news also brings journalistic kudos and awards. In late 2001, the Pew Charitable Trust's Project for Excellence in Journalism recognized WFLA-TV as providing the best television journalism in the Tampa Bay Region.<sup>20</sup> Attached to Professor Powell's statement is an extensive list of additional and more recent awards through which the journalistic community has recognized and praised Media General's convergence efforts in Tampa.

**B. Media General's Experience Demonstrates That Smaller Communities Benefit Tremendously from the Improved News and Greater Local Content That Converged Properties Deliver.**

As in Tampa, the newspapers and television stations in each of Media General's other five convergence markets maintain separate news and editorial staffs. Although they do not have the advantages of co-location as in Tampa, the news staffs at the co-owned properties regularly share story ideas electronically and by telephone. All of Media General's converged properties now equip their print photojournalists with digital video cameras to provide video to the television stations; they provide their television cameramen with equipment that allows the newspapers to retrieve print-quality photos. The newspapers also make their extensive archives available to the television stations. As is also true in Tampa, the news staffs at each of Media General's cross-owned television stations have grown since convergence began. Five of the six stations also have added appreciably to the number of hours of news programming that they offer

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<sup>20</sup> Tom Rosensteil *et al.*, "The Magic Formula: Five proven steps to financial success in news," CJR/Project for Excellence in Journalism, Nov./Dec. 2001, at 10.

each week; the sixth's news schedule has not diminished. A description of Media General's other convergence markets, in descending order of DMA size, follows below.

Roanoke-Lynchburg, Virginia. Media General's second largest convergence market, the Roanoke-Lynchburg DMA, covers a large, mountainous region of southwestern Virginia. There, Media General subsidiaries own television station WSLs-TV, which is licensed to Roanoke; *The (Lynchburg) News & Advance*; and the *Danville Register & Bee*. Media General also operates a separate website for each platform.

As Professor Powell explains, given the topography and the large distances between the widely separated towns of Roanoke, Lynchburg, and Danville, Media General's efforts at convergence in this DMA are perhaps the least developed among its six convergence markets; nonetheless, since convergence began, the three platforms have increased both the quantity and quality of their coverage of news, political issues, sports, weather, and community events.<sup>21</sup> Since convergence began, WSLs-TV has added an additional hour of newscasts each weekday.

The platforms have shared "tips" on numerous stories to ensure news reaches the community in the quickest way possible. Recent examples have included reporting on a local college's plan to change from a single sex institution and developments in the trial of a local official. In addition, the three platforms have collaborated on enterprise pieces and recurring specials that provide in-depth background and analysis of issues important to local residents. One particular project has been the monthly series "Exploring Virginia," which focuses on an issue of regional importance and provides coverage of the issue on all three platforms. Featured topics have been fire safety, regional history, recreation and religion; one recent three-part series

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<sup>21</sup> Powell, Exhibit B (Roanoke).

entitled “Exploring Our Faith” addressed the differences and similarities in practices and beliefs among various local religious communities.

In the Roanoke DMA, political coverage and sports reporting have realized the most benefits from convergence. Earlier this year, the WSLS-TV staff worked together with the newspapers’ staff to broadcast two 30-minute local news specials, one on new Virginia Governor Tim Kaine’s inauguration and a second on the opening of the new state legislative session in Richmond. As detailed in Professor Powell’s Statement, WSLS-TV also works with the newspapers to ensure the widest election night coverage possible. In addition, it broadcasts debates and, during election season, broadcasts “Ad Watch/Truth Tracker,” which examines political advertisements and free time segments given to candidates and then reports on any inaccuracies they include.

Every Friday night in the fall, staff at all three platforms work together to present “Friday Football,” a broad cross-media effort that provides unparalleled coverage of 55 high school football teams throughout the DMA. Based on this collaboration, WSLS-TV broadcasts a 30-minute sports report from 11:15-11:45 p.m., in an extended late news broadcast, presenting final scores, stories and videos from key high school football games throughout the DMA. Without the participation of personnel from all three platforms, the newscast could not cover all the region’s games. Media General has also established a special joint website, [www.fridayfootball.com](http://www.fridayfootball.com), to which it posts longer reports and video, adding content to the televised report.

Tri-Cities. In the Tri-Cities, Tennessee/Virginia DMA, Media General owns television station WJHL-TV, which is licensed to Johnson City, Tennessee, and the *Bristol (Virginia-*

*Tennessee) Herald Courier*, which is published in Bristol, a city that straddles the state border. Media General also operates a joint portal for these platforms at [www.tricities.com](http://www.tricities.com).

Like Roanoke, Tri-Cities is a mountainous DMA with dispersed population centers, yet, as Professor Powell explains, Media General is able to ensure coverage of breaking news throughout the region by utilizing facilities in three locations: WJHL-TV's main studio in Johnson City; another studio which it maintains in the *Herald Courier*'s newsroom in Bristol; and a news bureau in Kingsport, Tennessee.<sup>22</sup> The newspaper and television station are linked by two-way fiber. Before convergence began, a WJHL-TV reporter would have had to drive 45 minutes from Bristol back to WJHL-TV's Johnson City studios to broadcast news about the Bristol area on WJHL-TV's airwaves. Now, WJHL-TV and newspaper staff can make sure that reports from Bristol are broadcast right away. WJHL-TV has added 90 minutes of additional local news coverage every weekday.

Working together, Media General's Tri-Cities platforms also have greatly expanded their political coverage. Professor Powell devotes over five pages of his statement to reviewing these benefits, which range from a special three-day series of live reports on the opening of the Tennessee legislature earlier this year to presentation of pre-election profiles of candidates in most local and regional races to comprehensive election night coverage of races in jurisdictions spanning the DMA.

Additionally, WJHL-TV broadcasts other numerous special reports and regularly televised series that would not be possible without access and input from the newspaper's staff. The most prominent example is "Medical Watch," which WJHL-TV airs every weekday evening during two of its early evening newscasts. The newspaper publishes a monthly "Medical Watch"

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<sup>22</sup> *Powell*, Exhibit C (Tri-Cities).

special insert. Reporters from each outlet work together in this effort, which also includes a quarterly in-depth television special on a health-related issue of particular local importance. One recent segment focused on the high incidence of obesity and diabetes in the Tri-Cities area. During the diabetes special, viewers could phone questions to an expert panel; the website also featured a questionnaire users could complete to evaluate their own condition. Like Media General's other convergence markets, WJHL-TV has been able to broadcast innumerable breaking news stories and other reports due to its relationship with the newspaper. Professor Powell's report lists literally hundreds of such examples in the last several years.

Myrtle Beach-Florence, South Carolina. In the Myrtle Beach-Florence, South Carolina DMA, Media General owns television station WBTW(TV), which is licensed to Florence, South Carolina, and the *Morning News*, which is published in Florence. Earlier this spring, Media General also launched a portal for both outlets -- [www.scnow.com](http://www.scnow.com).

As Professor Powell reports, the *Morning News* was established in 1922, and WBTW(TV) has found access to the archives of the paper to be crucial not only to ongoing coverage of news in the area, but to the development of special and investigative reports.<sup>23</sup> For example, archival material from the newspaper made possible WBTW(TV)'s 2004 report on the half-century anniversary of *Brown v. Board of Education* and the local impact of the decision. Coastal storms and weather are frequently important news issues in the DMA, and WBTW(TV) has relied on the archives repeatedly in its weather coverage, such as in its production and broadcast of an in-depth report on "Storms of the Century." Indeed, weather is such an important regional issue that Media General has supplied WBTW(TV) and all of its television

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<sup>23</sup> Powell, Exhibit D (Myrtle Beach-Florence).



stations in coastal areas with equipment that allows them to provide continuous live and local streaming video coverage via their websites in the event of a major storm threat or event.

With access to the *Morning News*' reporters and resources, WBTW(TV) has been able to provide greater depth to other types of special reports and to expand its coverage of major events and issues in the DMA. Over the past few years, for example, the outlets have worked together to provide ongoing coverage of the proposed development of Interstate 73, which will run, with some interruptions, from Michigan to the South Carolina coast near Myrtle Beach. In spring 2004, WBTW(TV) and *Morning News* reporters together traveled to Washington, D.C. to report on lobbying efforts to increase funding for this important multi-regional project. These reporters were able to contact more different sources and present a wider-ranging and more complete report from Washington than would have been possible if they had acted alone. In 2004 and 2005, WBTW(TV) and the *Morning News*, in conjunction with the local public television station, held a total of three "Town Hall" meetings on the proposed interstate. WBTW(TV) provided on-air coverage of these meetings, which were held at Frances Marion University and Coastal Carolina University, through two hour-long local special weekday broadcasts from 5:00 to 6:00 p.m. These specials included news segments on the interstate and panel discussions.

In May 2006, when officials from the South Carolina Department of Transportation announced their proposed route for the interstate, WBTW(TV) provided coverage with live cut-ins to its regularly scheduled programming. The [www.scnow.com](http://www.scnow.com) website also provided live and local streaming video coverage of the complete announcement.

WBTW(TV) and the *Morning News* additionally have collaborated on a number of recurring features and series that, because of convergence, are more informative and achieve wider distribution throughout the DMA. In 2003, WBTW(TV) introduced the local public

affairs program “Count on Health,” which addresses health and medical issues in the DMA. The staffs of all three platforms collaborate on research and planning for the stories. WBTW(TV) airs a half-hour locally produced program every Saturday night at 7:30 p.m.; it frequently includes interviews with the newspaper’s health reporter. Every Tuesday morning, the *Morning News* includes a health section which expands upon a number of issues addressed during the broadcast segments. WBTW(TV)’s health reporter also produces a column that the newspaper publishes as part of its weekly health section. Finally, stories from the *Morning News*, video clips from WBTW(TV), and unique supplemental health information are posted to [www.scnow.com](http://www.scnow.com).

WBTW(TV) and the *Morning News* also recently began collaboration on a recurring feature entitled “Future Focus,” which has its roots in community ascertainment initiatives and addresses issues arising from the explosive population growth in the DMA, particularly around Myrtle Beach. Once a week, as part of its 6:00 p.m. newscast, WBTW(TV) broadcasts a segment that discusses growth-related issues, such as road construction, housing availability, and strains on the area’s environment. Related stories focusing on the Florence area appear in the *Morning News* and are posted to a special section of the [www.scnow.com](http://www.scnow.com) website.

As part of this “Future Focus” initiative, WBTW(TV) solicits the involvement of a panel of community leaders which the station first assembled in the fall of 2005 and which now meets periodically at the Myrtle Beach Chamber of Commerce to discuss growth-related stories and issues they believe have local importance. Panel members participate in interviews for broadcast, and the information from the sessions is shared among all three outlets. Other initiatives that have benefited from convergence are detailed by Professor Powell and include the

“Voice of the Voter” program and expanded Friday night coverage of high school football in a special local program entitled “The Blitz.”

Columbus, Georgia. In the Columbus, Georgia DMA, Media General owns television station WRBL(TV), which is licensed to Columbus, and the *Opelika-Auburn News*, which is published in Opelika, Alabama. Opelika and Auburn are adjacent to each other in eastern Alabama and located approximately 30 miles to the west of Columbus. Opelika-Auburn and Columbus are separated by the Chattahoochee River, which serves as the Georgia-Alabama border and the boundary between the Eastern and Central Time Zones.

As Professor Powell’s Statement indicates, a WRBL(TV) reporter is permanently assigned to the station’s Opelika bureau, which is housed in the newspaper’s building.<sup>24</sup> From this facility, WRBL(TV), which does not operate a satellite truck, has the capability of transmitting live video for broadcast on WRBL(TV). Prior to convergence, it would have taken a WRBL(TV) reporter almost one hour to drive from Opelika back to Columbus to provide video footage for broadcast. With this base, WRBL(TV) has been able to broadcast improved coverage of breaking news and other events occurring in the western portion of its DMA.

The stories that WRBL(TV), working with the newspaper, has been able to break over the last couple years have included an explosion at an Alabama factory; a burglary and subsequent apprehension of the burglar; a lawsuit alleging student abuse at a local military academy; the dismissal, allegedly racially motivated, of a number of Auburn University Athletic Department employees; a scandal involving the legitimacy of grades given Auburn University football players; and the collapse of a wall onto a construction site worker. The reporters from each outlet bring fresh information and a different perspective to each platform’s reporting.

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<sup>24</sup> *Powell*, Exhibit E (Columbus).

In one particular example of convergence, reporters from each platform worked together to provide continuous coverage of a federal environmental trial held in eastern Alabama in a manner that neither could have accomplished alone. During each day of the trial, the WRBL(TV) reporter attended the morning sessions, until she needed to leave to prepare a report for broadcast in the evening news. The newspaper's reporter then attended the later portion of each day's proceedings.

Convergence has also allowed the platforms to improve their investigative reporting. For one recent series entitled the "State of Secrecy," the two outlets, in consultation with the Alabama Council for Open Government, investigated the openness and accountability of government records in many of the DMA's small towns and municipalities. The newspaper's reporters investigated the Alabama counties, WRBL(TV)'s reporters the Georgia counties. Together, they were able to provide a comprehensive regional review, comparing the policies followed in each state, which was very useful to the DMA's residents who frequently travel back and forth between the states, many on a daily basis. Although the outlets conducted joint research, each one independently prepared its reports for dissemination. The two platforms again teamed up, in much the same fashion, on a series investigating the effectiveness and coverage of "first responder" units in the DMA, a project Professor Powell describes in greater detail in his statement.

Panama City. In Panama City, Florida, Media General's smallest convergence market, its television station, WMBB(TV) in Panama City, and the *Jackson County Floridan*, which is published in Marianna, Florida, have worked effectively together to increase the coverage of local news in the DMA. This convergence story is best exemplified by the platforms' (i) hurricane coverage, (ii) political forums, and (iii) investigative reporting.

First, as Professor Powell reports with respect to hurricane coverage, the Panama City DMA is located on the northern Gulf Coast, and its residents frequently find themselves directly in the path of hurricanes.<sup>25</sup> In July 2005, Hurricane Dennis was predicted to make landfall in the DMA as an extremely severe Category 4 storm. For a 36-hour period preceding its arrival and during the storm, WMBB(TV) preempted all regularly-scheduled programming and presented “wall-to-wall” (commercial free) hurricane coverage. A WMBB(TV) reporter was stationed in the *Floridan*’s newsroom and broadcast live reports from that location, including live interviews with representatives of the Jackson County Sheriff’s Department and Emergency Operations Center. From the *Floridan*’s more northerly location, the coverage also included extensive information on the condition of the evacuation routes leading north out of the DMA as well as reports on the particular dangers faced by residents in that part of the DMA. In addition to this live “wall-to-wall” broadcast coverage, both WMBB(TV) and the *Floridan* provided live and local streaming video coverage on their websites. The Associated Press recognized WMBB(TV)’s exceptional coverage of this event, awarding the station its Best Hurricane Coverage Award for 2005.

WMBB(TV) and the *Floridan* took similar steps in 2004 to cover that very busy hurricane season. The most serious storm that year was Hurricane Ivan. Working together, the platforms provided unparalleled coverage of meteorological developments, evacuation routes, and safety issues, again including continuous live “wall-to-wall” coverage on WMBB(TV). As was true in 2005, the coverage earned kudos, this time when Chipola College, located in Jackson County, awarded WMBB(TV) a “Legion of Merit Citation for Exemplary Broadcast Journalism During Hurricane Ivan.”

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<sup>25</sup> *Powell*, Exhibit F (Panama City).

Second, on political matters, in addition to providing regular coverage of candidate races and issues, the two outlets have worked together, since convergence began, to present political forums in conjunction with the League of Women Voters. In 2002, the outlets presented two such forums -- one for the Republican and Democratic primary elections for a local county school board and county commission and another for the general election for that school board and a local legislative district. The panel for each event included representatives from both outlets. WMBB(TV) broadcast each 90-minute forum live and provided extensive news coverage before and after the events. In fall 2004, WMBB(TV) broadcast a live two and one-half hour candidate forum for the Republican and Democratic primaries for a local county school board, county commission, and county sheriff elections and then presented another two and one-half hour live broadcast of a forum for these offices and three others during the general election. So far in this 2006 election season, WMBB(TV) already has hosted a candidate forum which it broadcast live one evening from 6:30 to 8:00 p.m. and rebroadcast the following Saturday afternoon.

Third, through their combined efforts and resources, WMBB(TV) and the *Floridan* have been able to develop special investigative pieces that they could not have prepared as effectively acting alone. For example, during a 2004 campaign for a state's attorney office in the DMA, WMBB(TV) and the *Floridan* teamed up on an investigation to identify a group that had purchased television and print advertisements highly critical of one of the candidates. WMBB(TV) obtained a large number of relevant documents, and a *Floridan* reporter with expertise in fundraising records analyzed them. On another occasion, the two platforms worked together to develop a story in the face of significant resistance by some government officials. When the platforms discovered that accusations of sexual misconduct involving a young girl had

been leveled against a Jackson County sheriff's deputy, the combined clout of the two platforms overcame the efforts of government officials to prevent dissemination of the story, which ultimately was reported both on WMBB(TV) and in the *Floridan*.

In a 2004 incident, the *Floridan* provided WMBB(TV) with a "tip" about a girl who had been killed in a school bus accident because her backpack had become trapped in the bus's door, causing the vehicle to drag her. WMBB(TV)'s reporter interviewed some of the girl's classmates, while the *Floridan* investigated the school bus driver's driving record and the possibility of a mechanical failure with the bus's doors. The reporters shared the results of their investigations, the WMBB(TV) reporter prepared a segment for broadcast, and the *Floridan* reporter prepared a story for publication in the newspaper.

In 2002, WMBB(TV) received a "tip" that a local child welfare agency and the inspector general from a related department were conducting an investigation to determine if a local school for troubled boys had covered up problems of widespread sexual activity. Through its extensive contacts, the *Floridan* was able to determine the status of the investigation. In another 2002 incident, WMBB(TV), the *Floridan*, and two Media General newspapers in the adjacent Dothan, Alabama DMA joined forces to research and present special reports on a controversial proposal for an Interstate 10 highway connector. Professor Powell's statement recounts numerous additional examples and instances in which convergence has produced better, faster, and deeper news for this smallest of Media General's convergence markets.

The success of convergence in smaller markets is not a surprise to Professor Powell. He details numerous examples in which convergence has brought greater news quantity and enhanced quality as well as other benefits to communities, large and small.

**C. Empirical Program Studies Demonstrate That Converged Properties Deliver Increased Quantity and Higher Quality Local and Free Non-Entertainment Programming.**

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It is not an anomaly that Media General's cross-owned properties deliver a wealth of locally produced news and other non-entertainment programming to their communities. At least seven studies over more than three decades consistently have demonstrated that television stations jointly owned with newspapers are likely to broadcast significantly more news and informational programming than other stations in the same market. The most recent study, one prepared last month updating and expanding upon a similar review in 2001, shows additionally that the total amount of news and informational programming broadcast by all stations in a market is likely to be higher in DMAs that include at least one jointly-owned television and newspaper outlet than in markets where there is no such cross-ownership.

The first of these studies was conducted by the FCC itself and undertaken as part of the proceeding that led to adoption of the 1975 Rule. Published as Appendix C to the *Second Report and Order*, the study, which was conducted in 1973 and based on TV Station Annual Programming Reports filed with the FCC, found that television stations owned by newspapers, on average, offered six percent more local news, nine percent more local non-entertainment programming, and 12 percent more total local programming than other television stations.<sup>26</sup> The FCC described these results as presenting "an undramatic but nonetheless statistically significant superiority in newspaper-owned television stations in a number of program particulars."<sup>27</sup>

The second study was undertaken by A.H. Belo Corporation and submitted in connection with its comments in the 1998 Biennial Regulatory Review urging repeal of the 1975 Rule.<sup>28</sup>

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<sup>26</sup> 1975 *Second Report and Order*, 50 FCC 2d at 1078 n.26 and Appendix C.

<sup>27</sup> *Id.* at 1078 n.26.

<sup>28</sup> Appendix C, Comments of A.H. Belo Corporation, MM Docket No. 98-35 (July 21, 1998).



Among the stations included in the study was WFAA-TV, Dallas-Fort Worth, Texas, where Belo jointly owns *The Dallas Morning News*. As the study showed, WFAA-TV aired over 60 hours a week of non-entertainment programming, consisting of newscasts, news/information programming (e.g., news “magazines” and morning news programs), public affairs programs, instructional shows, children’s educational programming, and religious programs.<sup>29</sup> This total placed WFAA-TV appreciably ahead of the other network affiliates in its market in terms of average hours of non-entertainment programming aired in a week and placed WFAA-TV second among all 17 Belo stations, a second-place showing that was so close that it could be disputed as statistically insignificant, particularly since different calendar weeks were used to measure news output at the various Belo stations.<sup>30</sup>

Third, in a 2001 study commissioned by Media General, media expert Dr. S. Robert Lichter, co-founder of the Center for Media and Public Affairs, found that common ownership has a positive effect on the overall amount of non-entertainment programming broadcast in a market.<sup>31</sup> In his study, Dr. Lichter paired each Media General co-owned DMA with the immediately higher-ranked or larger DMA. None of the higher-ranked DMAs included a commonly owned television station and newspaper. For each market, Dr. Lichter coded and

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<sup>29</sup> *Id.* WFAA-TV specifically broadcast 81.5 hours total of non-entertainment programming, 61.94 hours when discounted for commercials. Its weekly total as a percentage of all programming was 48.5 percent, 36.9 percent when discounted for commercials. These percentages were much larger than the 41.2 percent, 32.0 percent when discounted for commercials, broadcast on average by the other stations in the Dallas-Fort Worth market.

<sup>30</sup> KTVB, Boise, Idaho aired more non-entertainment programming than WFAA-TV, and its percentages were just slightly higher than WFAA-TV’s -- 83.5 percent of the total programming was non-entertainment, 63.46 when discounted for commercials. Different “news weeks” were used for the two stations, and the slight difference may be explainable on that basis.

<sup>31</sup> Samuel Robert Lichter, Ph.D., *Review of the Increases in Markets with Newspaper-Owned Television Stations*, Dec. 2001, at 3 (“Lichter Study”), attached as Appendix 5 to Comments of Media General, MM Docket No. 01-235 (Dec. 3, 2001). Dr. Lichter’s qualifications were appended to his study.

categorized the listings using the same six categories utilized in the Belo study, including one additional category for agricultural programming. He then calculated the number of hours of non-entertainment programming presented both in total and on average by the four network affiliated stations in the Media General markets and in the next adjacent, immediately higher-ranked DMAs.<sup>32</sup> Dr. Lichter compared these averages and found significant results that produced a consistent pattern. In five out of six of the comparisons between DMAs with newspaper-owned television stations and DMAs without such stations, the stations in the co-owned DMAs offered appreciably more non-entertainment programming on average than the stations in non-co-owned markets. The differences ranged from a low of one percent greater in the comparison of co-owned Columbus, Georgia, and non-co-owned Yakima, Washington, to a high of 15 percent between co-owned Tri-Cities, Tennessee/Virginia and non-co-owned Davenport, Iowa. Only in the Roanoke, Virginia DMA did the co-owned stations offer less non-entertainment programming than the stations in non-co-owned Lexington, Kentucky.<sup>33</sup>

A fourth study, cited by the FCC with approval in the *July 2003 Decision*, showed that newspaper/broadcast cross-ownership enhances the flow of news and information to the public.<sup>34</sup> Reviewing ratings for news programming on television stations in “grandfathered” combinations, this study found that, on average, the newspaper-owned television stations, during early news dayparts led the ratings in the market, delivered 43 percent more audience share than the market’s second-ranked station and a 193 percent larger audience than the third-ranked station. Even in the late news dayparts, which the study noted have their ratings affected by the

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<sup>32</sup> *Id.* at 3.

<sup>33</sup> *Id.* at 4 and Table 1.

<sup>34</sup> Comments of Victor B. Miller and Kevin R. Grunech of Bear Stearns & Co. Inc., MM Docket 01-235, *et al.* (Dec. 3, 2001) (“Miller Comments”) at 24-28 & Ex. 8, as *cited in 2003 July Decision*, 18 FCC Rcd at 13761.

varying strength of the lead-in primetime network programming, the stations owned by a newspaper showed an average 17 percent audience advantage over the second-ranked station and an average 134 percent advantage relative to the third-ranked station. Network affiliates of the newspaper-owned stations in the study were spread across all three major networks, and, as the study concluded, “broadcasters with newspaper-television cross-ownership advantages were able to deliver superior ratings regardless of the affiliation of the station.”<sup>35</sup>

A fifth study, authored by members of the FCC staff and cited with approval by the United States Court of Appeals for the Third Circuit, sought to measure the news and public affairs broadcast by television stations for purposes of comparing the performance of stations owned by one of the four largest broadcast networks relative to that of their affiliates.<sup>36</sup> At the same time, this study also provided empirical information demonstrating that repeal of the 1975 Rule would be unlikely to harm the delivery of news and public affairs. In fact, it suggests repeal would have beneficial effects.

This FCC study attempted to measure the quantity and quality of news and public affairs programming. For an assessment of quantity, the study tallied the hours of programming aired during the November 2000 sweeps period.<sup>37</sup> For quality, it used three measures: (1) ratings for local evening news programs; (2) awards from the Radio and Television News Directors Association; and (3) an award called the Silver Baton issued at the A.I. Dupont Awards.<sup>38</sup>

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<sup>35</sup> Miller Comments at 25.

<sup>36</sup> Thomas C. Spavins, *et al.*, “The Measurement of Local Television News and Public Affairs,” MOWG Study No. 7 (Sept. 2002) (“Spavins Study”), *cited and discussed in Prometheus Radio Project v. FCC*, 373 F.3d at 398-99. The study states that the views it expresses do not necessarily reflect those of the agency. The study is not paginated. Citations assume that the first page following the “Executive Summary” is page 1.

<sup>37</sup> Spavins Study at 1.

<sup>38</sup> *Id.*

Among network affiliates, the study found a “systematic divergence” in performance between stations that were co-owned with a newspaper and all other affiliates.<sup>39</sup> For each quality and quantity measure in the analysis, the newspaper-owned affiliates exceeded the performance of other, non-newspaper network affiliates.<sup>40</sup> In defending the study against criticism of its methods, the United States Court of Appeals for the Third Circuit specifically noted “[t]he six intramarket combinations that were included in the study (grandfathered exceptions to the cross-ownership ban) averaged more local news and public affairs programming as compared to the overall average (26 weekly hours compared to 21.9) and higher ratings for their 5:30 p.m. and 6:00 p.m. news programs (9.8 and 11 compared to 7.8 and 8.2).”<sup>41</sup>

Both the FCC and the United States Court of Appeals for the Third Circuit found that similar conclusions were supported by a sixth study done by the Project for Excellence in Journalism (“PEJ”) in which PEJ analyzed five years of data on ownership and news quality.<sup>42</sup> PEJ found that cross-owned stations in the same DMA were more than twice as likely to receive an “A” grade under PEJ’s standards as were other stations.<sup>43</sup> As the FCC noted and the court recognized, “newspaper-owned stations ‘were more likely to do stories focusing on important community issues and to provide a wide mix of opinions, and they were less likely to do celebrity and human interest features.’”<sup>44</sup> The United States Court of Appeals for the Third Circuit defended the FCC’s reliance on this study against criticism from certain parties. The

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<sup>39</sup> *Id.* at 4.

<sup>40</sup> *Id.*

<sup>41</sup> *Prometheus*, 373 F.3d at 399 (citation omitted).

<sup>42</sup> Project for Excellence in Journalism, *Does Ownership Matter in Local Television News: A Five-Year Study of Ownership and Quality* (Feb. 17, 2003) (“PEJ Study”).

<sup>43</sup> *Id.* at 10.

<sup>44</sup> *Prometheus*, 373 F.3d at 398, quoting *July 2003 Decision*, 18 FCC Rcd at 13755.

FCC had specifically acknowledged that, while results in the PEJ Study were not statistically significant, it was relying upon it as anecdotal evidence,<sup>45</sup> reliance which the court found acceptable “to illustrate its statistical findings.”<sup>46</sup>

A seventh and more recent Media General study drives home the point that television stations cross-owned with newspapers deliver an increased and improved news product. Building on the Lichter Study, this latest report by Economists Incorporated sought an updated measure of the non-entertainment programming provided in markets with and markets without newspaper-owned television stations. This study included stations in the six DMAs where Media General operates cross-owned properties as well as cross-owned and other stations in the five additional convergence markets ranked below DMA #92 in order to track, specifically, the effects of cross-ownership in medium and small markets.<sup>47</sup> As was true in the Lichter Study, these eleven DMAs were paired with larger DMAs without cross-owned television stations. Program listings again came from *TV Guide* and, for children’s programming, FCC Form 398s; the study measured programming across the same seven categories the Lichter Study had employed. Based on a week of programming in mid-September 2006, this study again found “convergence markets are associated with levels of non-entertainment programming that are, on average, five percent higher.”<sup>48</sup>

These seven empirical studies, measuring the effect of common ownership over 33 years and using a variety of empirical approaches, are very significant. Not only do they show

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<sup>45</sup> *July 2003 Decision*, 18 FCC Rcd at 13755 n.766.

<sup>46</sup> *Prometheus*, 373 F.3d at 399.

<sup>47</sup> Economists Incorporated, *Review of the Increases in Non-entertainment Programming Provided in Markets with Newspaper-Owned Television Stations: An Update*, Oct. 2006 at 1-2, attached as Appendix 5 (“EI Programming Study”).

<sup>48</sup> EI Programming Study at 5.

consistently that a station owned by a newspaper offers more and higher quality non-entertainment programming, but they also establish that the presence of a commonly owned television station in a market raises the bar for all competing broadcast players in the market, a trend that Media General has noticed in its own experience. Accordingly, it appears that cross-ownership has a positive, market-wide effect on the quantity and quality of non-entertainment programming available to viewers.

**IV. The FCC’s Concern Over the Impact of Newspaper/Broadcast Cross-Ownership on Diversity Is Misplaced, Cannot Be Measured, and Is Belied by the Tremendous Growth in New Content Providers, Which Bring an Unprecedented Competition for Audiences and Threaten Wholesale Bypass of Broadcast Platforms and the Loss of Local and Free News Content.**

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**A. Three Decades Ago, the Commission Based Adoption of the 1975 Rule on Sheer Speculation That It Would Foster Diversity Rather Than in Response to Any Demonstrable Showing of Harm to Diversity from Common Ownership.**

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In 1975, the Commission asserted authority under the Communications Act to adopt a rule flatly prohibiting newspaper publishers, who held no spectrum-related assets, from acquiring and operating broadcast stations in markets in which their newspapers are published. Pointedly, the Commission adopted the 1975 Rule, not because it cited any “basis in fact or law for finding newspaper owners unqualified as a group for future broadcast ownership,”<sup>49</sup> but solely because “[w]e think that any new licensing should be expected to add to local diversity.”<sup>50</sup>

Although now frequently cited as established fact, this determination represented nothing more than conjecture that the 1975 Rule would improve diversity, conjecture that ignored a number of contrary empirical findings in the record. Even in 1975, the FCC acknowledged that “most” of the commenting parties who had commonly owned newspaper and broadcast facilities

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<sup>49</sup> 1975 *Second Report and Order*, 50 FCC 2d at 1075.

<sup>50</sup> *Id.*

reported that their stations and newspapers had separate management, facilities, and staff, including the news staffs.<sup>51</sup> “Some even claim that because they have separate editorial boards they present editorials in one outlet which are opposed in the other.”<sup>52</sup> The parties also pointed to “built-in protections” against common expressions of viewpoint resulting from common ownership. These included the professionalism among journalists and industry practices and ethical codes that transcend employer-employee loyalties and result in independence among journalistic staff members and editors.<sup>53</sup> As the FCC noted, these same parties had commented that, if commonly owned outlets had prevented or stymied the dissemination of views, the public would have been complaining vociferously about actual abuses. A number of parties observed that the silence from the public on this point was the most telling argument against the need for the 1975 Rule. Moreover, as noted above, the 1973 study of broadcast licensee programming the FCC’s own staff conducted found that newspaper-owned broadcast stations delivered more local news, more local non-entertainment programming, and more total local programming than other television stations.<sup>54</sup>

Based on this material, the FCC found that there generally was significant diversity or “separate operation” between commonly owned broadcast stations and newspapers.<sup>55</sup> Even on appeal, in 1977, the United States Court of Appeals for the District of Columbia Circuit found that the FCC had adopted the 1975 Rule “without compiling a substantial record of tangible harm”; the court noted that the 1975 Rule was based on a record that included “little reliable

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<sup>51</sup> *Id.* at 1059

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 1059-60.

<sup>54</sup> *Id.* at 1078 n.26.

<sup>55</sup> *Id.* at 1089.

‘hard’ information.”<sup>56</sup> In affirming the FCC’s adoption of the 1975 Rule, the United States Supreme Court recognized that the FCC’s diversity rationale represented “‘a mere hoped-for gain in diversity’.”<sup>57</sup>

**B. FCC Precedent Leading Up to 2003 and Addressing Structural Ownership Regulations Showed No Correlation Between Common Ownership and Any Loss in Diversity.**

Not only in 1975, but in other precedents leading up to the *July 2003 Decision* to eliminate the 1975 Rule, the FCC has acknowledged that the conjecture that ownership diversity would lead to diversity of content and viewpoint was ill-founded and invalid. (It then proceeded to relax or repeal other structural ownership regulations.) Media General’s “real world” experiences and those of many other companies also demonstrate that there is no correlation between common ownership and diversity of viewpoint. In light of this FCC precedent and the confirming evidence from the industry, the FCC has no sustainable basis for restricting newspaper/broadcast cross-ownership in any manner.

**1. FCC Precedent.**

Conjecture aside, the FCC has never demonstrated a link between its structural ownership rules and viewpoint diversity. In the 15 years leading up to its 2003 decision, faced with growing evidence that common ownership produced tangible public interest benefits and that its continued restrictions *suppressed* those benefits, the FCC repealed or relaxed various ownership regulations. In the process, the FCC noted that it did not expect the changes to have an impact on viewpoint diversity. In fact, in the course of adopting these ownership modifications, the

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<sup>56</sup> *Nat’l Citizens Comm. for Broad. v. FCC*, 555 F.2d at 944, 956, *aff’d in part and rev’d in part*, *NCCB*.

<sup>57</sup> *NCCB*, 436 U.S. at 786.



FCC began to acknowledge that common ownership leads to *increased* diversity of content and viewpoint.

In 2001, the FCC came to that conclusion in its Dual Network Rule proceeding, when it found that common ownership of broadcast networks creates rather than eliminates incentives to diversify programming and serve niche interests and minority audiences. Specifically, the FCC found, much as Media General has observed with changes in its own markets, that with combined ownership, content options frequently increase:

We also agree with commenters that a major network and an emerging network under common ownership would have a strong economic incentive to diversify their program offerings, particularly by increasing service to minority or niche tastes and interests. A single broadcast network has the incentive to attract the largest possible audience with mass appeal programming (which is similar to the programming offered by its rivals). However, if two networks are owned by a single entity, the entity has an incentive to attract an array of viewers with differing interests to produce the largest combined audience for the overall enterprise. This allows for the major network to pursue mass tastes, with the smaller network programming to pursue minority and niche tastes.<sup>58</sup>

Over a decade earlier, the FCC had relaxed its previous prohibition on joint ownership of same-market television and radio broadcast stations -- the “one-to-a-market rule” -- finding that the relaxation should not have a significant impact on viewpoint diversity.<sup>59</sup> In taking this step, the Commission noted that the comments filed in the proceeding showed that “the joint ownership of two or more media outlets in the same market does not necessarily lead to a

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<sup>58</sup> *Amendment of Section 73.658(g) of the Commission’s Rules -- The Dual Network Rule, Report and Order*, 16 FCC Rcd 11114, 11131 (2001).

<sup>59</sup> *Amendment of Section 73.3555 of the Commission’s Rules, the Broadcast Multiple Ownership Rules, Second Report and Order*, 4 FCC Rcd 1741, 1744, *recons. denied in part, granted in part*, 4 FCC Rcd 6489 (1989).

commonality of viewpoints by those outlets.”<sup>60</sup> Commenting parties had shown that group owners of broadcast stations, even in the same market, do not necessarily disseminate a “monolithic viewpoint” at all their outlets. A CBS study, in particular, showed that in 45 percent of the instances in which CBS owned same-market radio and television stations made endorsements in electoral races over a three-year period from 1980 to 1983, they endorsed opposing candidates.<sup>61</sup> Some of these differing endorsements came in such major political races as a gubernatorial contest in California, a gubernatorial primary in New York, and a Chicago mayoral primary.<sup>62</sup> CBS also reported that its commonly owned stations took different editorial stances on important issues such as abortion and school prayer.<sup>63</sup> NBC submitted similar comments noting that its stations made editorial and programming decisions independently of other co-owned outlets, a procedure that produced a difference in operations.<sup>64</sup>

The FCC acknowledged similar comments and reached consistent findings over 15 years ago in the context of relaxing the radio local ownership rules, prior to the more substantial liberalization of local radio ownership limits in 1996. In first proposing that radio owners be allowed to own more than one AM and one FM station per market, the FCC expressed the following opinion:

On a local level, we believe that stations separately owned will each tend to strive for the same core audience with roughly the same type of programming, while the same stations managed in common may have greater incentives to appeal separately to distinct segments of the audience with distinct programming. In other words, stations managed in common can effectively

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<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

counterprogram each other. Therefore, we believe that increased group ownership need not necessarily decrease diversity of programming and, to the contrary, may encourage it; the Commission has noted that “it is instead possible to have greater viewpoint diversity than there is ownership diversity.”<sup>65</sup>

Shortly thereafter, in relaxing the local radio ownership rules, the FCC noted that the commenting parties in that proceeding, including the Federal Trade Commission, had agreed with the proposition in the NPRM that increased concentration will not harm diversity because a single owner is likely to try to program different stations to appeal to different audience segments so that total audience size is maximized, unlike competing stations, which are likely to reach the same core audience.<sup>66</sup> Again, Media General’s observation of stations in its co-owned markets has proven this prediction to be true, no matter what type of programming content is at issue.

## **2. Real World Experiences Over the Last Five Years.**

Media General and other parties have found that common ownership has not affected the diversity of viewpoints expressed by jointly owned platforms. Media General’s goal is not to have its commonly owned properties in each market assume identical personalities and take identical approaches to covering important issues of the day. To the contrary, Media General has found that each platform is more successful in reaching and expanding its audience if it is allowed to pursue its own independent content.

In convergence, each platform maintains separate news and editorial staffs. While news managers at each outlet are aware of what the other platforms are doing, they are free not to

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<sup>65</sup> Revision of Radio Rules and Policies, *Notice of Proposed Rulemaking*, 6 FCC Rcd 3275, 3276 (1991) (citations omitted). The FCC also noted that it had already had the opportunity to demonstrate the proof of this theory in the cable context.

follow the others' approaches in covering the news of the day and to do something entirely different. Each is aware of the others' direction but in no way is controlled by them. Media General's platforms, no matter what their method of disseminating content, operate separately in developing that content.

Media General does not have a company-wide editorial policy. As illustrated in 2004, its two largest newspapers -- *The Tampa Tribune* and the *Winston-Salem Journal* -- endorsed neither U.S. Presidential candidate, while many of its other papers, such as the *Bristol Herald Courier*, the *Danville Register & Bee*, and the *Richmond Times-Dispatch*, endorsed George Bush.<sup>67</sup> In Virginia's 2001 gubernatorial election, among the Media General newspapers in Virginia, some endorsed Republican Mark Earley, and some endorsed Democrat Mark Warner.<sup>68</sup> At least one made no endorsement at all. Something similar happened in the 2005 Virginia gubernatorial race. Among Media General's daily newspapers in the state, some endorsed Republican Jerry Kilgore, and some endorsed Democrat Timothy Kaine.<sup>69</sup>

To Media General, convergence does not equal homogenization or consolidation. The Media General professionals at the commonly owned properties recognize and respect the

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<sup>66</sup> Revision of Radio Rules and Policies, *Report and Order*, 7 FCC Rcd 2755, 2771, *recons. granted in part, denied in part*, 7 FCC Rcd 6387 (1992), *further recons. granted in part, denied in part*, 9 FCC Rcd 7183 (1994).

<sup>67</sup> "Why We Cannot Endorse President Bush for Re-election," *The Tampa Tribune*, Oct. 17, 2004, at Commentary p.2; "Bush Has Gone Astray," *Winston-Salem Journal*, Oct. 17, 2004, at A20; "Bush Has Proved His Leadership," *Bristol Herald-Courier*, Oct. 27, 2004 at 6A; "George W. Bush," *Danville Register & Bee*, Oct. 24, 2004, at 10B; "For Bush, Again," *Richmond Times-Dispatch*, Oct. 17, 2004.

<sup>68</sup> Compare, e.g., "Earley for Governor," *Richmond Times-Dispatch*, Oct. 28, 2001, at F2, with "Mark Warner, for our future," *Danville Register & Bee*, Nov. 4, 2001, at 10A.

<sup>69</sup> "For Kilgore," *Richmond Times-Dispatch*, Oct. 30, 2005 at E-2; "Kilgore, Bolling and Deeds," *Danville Register & Bee*, Nov. 6, 2005 at B8; "Kaine Best Choice for Governor," *Bristol Herald-Courier*, Oct. 30, 2005 at 10A; "Kaine for Governor," *Manassas Journal Messenger*, Nov. 3, 2005 at A6.

diversity of opinion within the organization and the choices of the other platforms' journalistic approach. Instead, from Media General's standpoint, convergence is about sharing ideas and resources to improve the company's core local news product and best serve the readers and viewers.

Available information regarding how other companies practicing convergence handle internal communications between news and editorial staffs at their co-owned outlets in the same markets suggests that, given principles common to the journalism profession, other companies similarly allow each of their outlets to function as journalistically and editorially autonomous outlets. Numerous submissions in the FCC's record leading up to the *July 2003 Decision* establish these practices.

For instance, the comments of both Belo Corp. (formerly known as A.H. Belo Corp.) and Gannett Co., Inc. in that proceeding documented that jointly owned and operated outlets do not sacrifice their journalistic and editorial autonomy.<sup>70</sup> Attached to the comments of Belo, in particular, was a statement from its chairman and chief executive officer, which discussed the company's overall news and editorial philosophies and emphasized, through discussion of his company's experience in owning *The Morning News* and WFAA-TV in Dallas-Fort Worth, that "Belo's approach to editorial independence among its news organizations has not been altered by shared newsgathering activities."<sup>71</sup> Like Media General's properties, Belo's television stations each make their own decisions on story selection, placement, coverage, and presentation.<sup>72</sup> The

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<sup>70</sup> Comments of Belo Corp. MB Docket No. 02-277 (Jan. 2, 2003) ("Belo 2003 Comments") at 14-19; Comments of Gannett Co., Inc., MB Docket No. 02-277 (Jan. 2, 2003), at 7-8.

<sup>71</sup> Statement of Robert W. Decherd, Chairman of the Board, President, and Chief Executive Officer, Belo Corp., *attached to* Belo 2003 Comments at 4.

<sup>72</sup> *Id.* at 1.

only connection that comes from common ownership, he explains, is a shared commitment to the company's values of "Integrity, Excellence, Fairness, Sense of Purpose, and Inclusiveness."<sup>73</sup>

In fact, Belo's chairman states that, in his experience, there is no link between "diversity of ownership" and "diversity of viewpoint":

The Commission should not assume that diverse television ownership in a given market guarantees newscasts that are "diverse and antagonistic" to each other, as the Commission has often described as its ownership policy goal. Regardless of whether the ownership in a market is diverse, there will be newscasts delivered which, at least for the ratings leader, will provide balanced coverage of the issues. This kind of reporting is driven by the economics of the marketplace, not diversity of ownership.<sup>74</sup>

The intense competition to be news leader in a market arises because the associated advertising stakes are high, he explains, since a significant portion of a television station's annual cash flow derives from advertising on its evening newscasts.<sup>75</sup> These "market incentives, not regulatory mandates, dictate that stations will produce the kind of newscasts that attract large, high quality audiences," he concludes.<sup>76</sup>

This independent approach to content at other companies' commonly owned properties was documented, as noted above, in studies on candidate endorsements that CBS and NBC submitted to the FCC in the course of its review of the "one-to-a-market" rule.<sup>77</sup> A study of 2004 Presidential endorsements that Media General has undertaken shows consistent results.<sup>78</sup>

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<sup>73</sup> *Id.* at 2.

<sup>74</sup> *Id.* at 3.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 4.

<sup>77</sup> *See* Section IV.B.1 above.

<sup>78</sup> Today, since virtually no local broadcast stations editorialize about candidates, Media General's research was limited to newspapers. The same companies that it reviewed, however, own broadcast stations, and there is no reason to assume that, as the FCC recognized in the past,

Not only did Media General's own newspapers not take the same positions on the Bush-Kerry race and Virginia gubernatorial races, but the newspapers of other companies active in the cross-ownership debate similarly have varied in their support of one candidate or another. Of the 47 Gannett Co., Inc. daily newspapers Media General identified as being included in the study, 15 supported George Bush and 32 supported John Kerry.<sup>79</sup> Of the eight daily Tribune Company newspapers Media General identified as being included in the study, two endorsed George Bush and six endorsed John Kerry.<sup>80</sup> Of the nine Cox Newspaper, Inc. dailies Media General identified as being included in the study, two endorsed George Bush and seven endorsed John Kerry.<sup>81</sup> Of the 14 daily newspapers owned by the New York Times Company that Media General identified as being included in the study, five endorsed George Bush, eight endorsed John Kerry, and one endorsed neither.<sup>82</sup> Ownership clearly did not influence or predict viewpoint.

Since the Commission has acknowledged in other contexts that its earlier conjecture that ownership diversity leads to content diversity is not valid, it is certainly time for the FCC to repudiate this speculation in the context of newspaper/broadcast cross-ownership as well. This need is even more compelling in this case since, as the FCC acknowledged at the time it adopted the 1975 Rule, it had no evidence on which to base its speculation. Given, as shown below, that

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the result would be any different for electronic platforms. Media General's review built on a list of endorsements from 2004 available at [http://uspolitics.about.com/library/bl\\_endorsements.htm?once=true&](http://uspolitics.about.com/library/bl_endorsements.htm?once=true&) (last checked October 21, 2006). Media General researched the ownership of the papers listed in this source and then verified the contents of the editorials.

<sup>79</sup> See endorsement charts attached as Appendix 6.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

there has been a literal explosion in sources of content since the FCC adopted the 1975 Rule -- and particularly in the last three years since it issued the *July 2003 Decision* -- diversity is a concept that has been overtaken and rendered totally obsolete by media history. At this point, to do anything but eliminate the newspaper/broadcast cross-ownership restrictions in all markets once and for all would ensure that newspapers and television stations are excluded from joining under common ownership to take advantage of new revolutionary technologies; cannot work together to compete against this profusion of new outlets in the same way that these platforms can; and, in the end, are bypassed by consumers who are attracted to the innovations the new outlets offer. The FCC's failure to eliminate any vestige of the 1975 Rule will risk that newspapers and television stations are themselves rendered increasingly irrelevant by media history.

**C. In 2003, the FCC Found That the 1975 Rule Was Not Necessary To Ensure Viewpoint Diversity, a Finding That the Court Affirmed on Review.**

In its *July 2003 Decision*, the FCC found that the 1975 Rule is not necessary to protect diversity in local markets, focusing primarily on “viewpoint diversity,” which it had defined as “the availability of media content reflecting a variety of perspectives.”<sup>83</sup> In reviewing comments filed in the proceeding, the FCC recognized the speculative nature of its inquiry: “[E]vidence shows that the link between common ownership of newspapers and broadcast outlets and common viewpoint is tenuous, ill-defined, and difficult to measure.”<sup>84</sup>

In the *July 2003 Decision*, the FCC first reviewed the benefits of common ownership. As the record established, “cross-ownership of newspapers and broadcast outlets creates efficiencies and synergies that enhance the quality and viability of media outlets, thus enhancing the flow of

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<sup>83</sup> *July 2003 Decision*, 18 FCC Rcd at 13624, 13767.

<sup>84</sup> *Id.* at 13767.



news and information to the public.”<sup>85</sup> As a result, the FCC had no trouble concluding that “[r]elaxing the cross-ownership rule could lead to an increase in the number of newspapers in some markets and foster the development of important new sources of local news and information.”<sup>86</sup> As it had found in its localism analysis, “the synergies and efficiencies that can be achieved by commonly located newspaper/broadcast combinations can and do lead to the production of more and qualitatively better news programming and the presentation of diverse viewpoints, as measured by third-parties.”<sup>87</sup>

Against these benefits, the FCC weighed the conjecture that the 1975 Rule was necessary for viewpoint diversity. In this analysis, the FCC first noted that, since 1975, newspaper readership and broadcast viewership had both declined and noted that the impact of ownership rules on the strength of media outlets remained an important concern. The FCC agreed particularly with one small market broadcaster that “maximizing the number of independent voices does not further diversity if those voices lack the resources to create and publish news and public information.”<sup>88</sup> The FCC found persuasive a study it had commissioned which showed that commonly-owned newspapers and broadcast stations do not necessarily speak with a single, monolithic voice.<sup>89</sup> Despite attacks on the study, the FCC found that its results and extensive anecdotal evidence from industry commenters on the lack of any link between ownership and viewpoint outweighed limited anecdotal evidence to the contrary.<sup>90</sup> The record fell far short of

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<sup>85</sup> *Id.* at 13760.

<sup>86</sup> *Id.* at 13760-13761.

<sup>87</sup> *Id.* at 13761 (footnote omitted).

<sup>88</sup> *Id.* at 13762 (footnote omitted), *quoting* West Virginia Media Comments, MM Docket No. 01-235 (Dec. 3, 2001) at 14-23.

<sup>89</sup> *Id.* at 13762-13763.

<sup>90</sup> *Id.* at 13762-13764.

allowing the FCC to conclude that cross-owned properties were likely to demonstrate uniform bias.<sup>91</sup>

The point on which the FCC’s “analysis turn[ed],” however, was “the availability of other news and informational outlets,” a factor that caused it to overlook any concerns about alleged ownership “bias”:<sup>92</sup>

Thus, while we do not dispute that a particular outlet may display some bias, particularly in matters that may affect the private or pecuniary interest of its corporate parent (*e.g.*, such as when an outlet has an interest in a real estate transaction or is being criticized in an op-ed), such anecdotes do not show a pattern of bias in the vast majority of news comment and coverage where self-interest is not implicated. Nor, moreover, do such incidents mean that the public was left uninformed about the situation by other available media. Therefore, it would seem that the remedy for any such “bias” is the provision of antagonistic viewpoint we seek to advance.<sup>93</sup>

The FCC then found “ample evidence that competing media outlets abound in markets of all sizes.”<sup>94</sup> It tallied competition among television stations, radio stations, cable television systems, daily newspapers, and the Internet, all vying for consumers’ attention. The FCC “disagree[d] with parties that assert[ed] that there is little diversity in media markets,” concluding that “[t]he average American has a far richer and more varied range of media voices from which to choose today than at any time in history.”<sup>95</sup> This growth in available media outlets attenuated the influence of any single viewpoint source.<sup>96</sup>

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<sup>91</sup> *Id.* at 13764-13765.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 13765.

<sup>95</sup> *Id.* at 13766.

<sup>96</sup> *Id.*

In short, the magnitude of the growth in local media voices shows that there will be a plethora of voices in most or all markets absent the rule. Indeed, the question confronting media companies today is not whether they will be able to demonstrate the distribution of news and information in any market, but whether they will be able to be heard at all above the cacophony of voices vying for the attention of Americans.<sup>97</sup>

The United States Court of Appeals for the Third Circuit readily determined that the Commission had “reasonably concluded” that it did not have confidence in the proposition that commonly owned outlets assert uniform bias, and the court agreed on the importance of the availability of other media, including the acceptability of the FCC’s finding that cable and the Internet do contribute to viewpoint diversity.<sup>98</sup>

**D. As Is True Around the Country, Media General’s Markets Benefit from a Profusion of Available Media Outlets Offering Local News and Content and Ensuring Absolutely No Harm from Repeal of the 1975 Rule.**

The media marketplace has changed dramatically since the FCC adopted the 1975 Rule, producing the type of “ample evidence” upon which the FCC relied in 2003 to find that “competing media outlets abound in markets of all sizes.”<sup>99</sup> As reviewed in this section, these changes have multiplied the reach of the media that existed as of 1975, while adding additional new FCC-authorized outlets. Perhaps the most accelerated changes have occurred, however, since the FCC adopted the *July 2003 Decision*. These changes, particularly developments over the last 12 months, have seen the launch of numerous video and audio outlets and methods of delivery not regulated by the FCC, which as discussed in the next section, create enormous competition for FCC-regulated sources of content as well as potential consumer bypass of legacy FCC-regulated outlets.

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<sup>97</sup> *Id.* (footnote omitted).

<sup>98</sup> *Prometheus*, 373 F.3d at 399-400.

<sup>99</sup> *July 2003 Decision*, 18 FCC Rcd at 13765.

When the FCC adopted the 1975 Rule, the only electronic outlets in existence were television and radio broadcast stations and cable television systems. Since then, the number of local radio and television stations in the nation has grown by over 75 percent, with radio stations increasing from 7,785 as of January 1, 1975, to 13,748 as of March 31, 2006, and television stations increasing from 952 to 1,752 over the same period.<sup>100</sup> Cable television's presence has also grown dramatically, increasing from 13 percent of television households subscribing in 1975 to a figure that hovers around 70 percent as of last year.<sup>101</sup> The number of channels available on cable systems has also increased, with 86.3 percent of occupied households now passed by cable systems with 36 or more channels,<sup>102</sup> and the great majority, or over 67 percent, able to receive at least 54 channels.<sup>103</sup> Other advanced services, such as video on demand, which are available through digital cable and were unheard of in 1975, are now becoming commonplace.

The programming services available over broadcast and cable platforms have also grown. Rather than just three national television networks, as was the case in 1975, there are now seven, along with three national Spanish-language networks. Since 2003, virtually all television stations have begun, if they were not already doing so as of that date, to broadcast multiple digital streams. Whether providing weather information, or other news and entertainment programming, this development has greatly expanded locally available content. Scores of

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<sup>100</sup> FCC Public Notice, "Broadcast Station Totals as of March 31, 2006," released May 26, 2006; *Cross-Ownership of Broadcast Stations and Newspapers, Newspaper/Radio Cross-Ownership Waiver Policy, Order and Notice of Proposed Rule Making*, 16 FCC Rcd 17283, 17288 (2001) ("2001 NPRM").

<sup>101</sup> *Annual Assessment of the State of Competition in the Market for Delivery of Video Programming, Twelfth Annual Report*, 21 FCC Rcd 2503, 2515-2518 (2006) ("Twelfth Annual Video Report"); 2001 NPRM, 16 FCC Rcd at 17288.

<sup>102</sup> *Twelfth Annual Video Report*, 21 FCC Rcd at 2513.

national cable networks, whether news or entertainment, are also powerful players. Some 110 regional cable networks have emerged, along with at least 26 local cable news services.<sup>104</sup>

Not only have the electronic services available in 1975 grown, but the FCC has authorized a myriad of new services, which have also produced increased competition. At the national level, direct broadcast satellite (“DBS”) has begun to erode cable’s subscription preeminence. Almost 86 percent of television households now subscribe to an MVPD service, and DBS accounts for 27.7 percent of all MVPD subscribers.<sup>105</sup> In the last year under review at the FCC, the number of cable subscribers actually declined slightly, falling from 66.1 million in June 2004 to 65.4 million in June 2005.<sup>106</sup> At the local level, full-power television stations have been joined by low-power television stations and Class A television stations as providers of free over-the-air broadcast programming. HD radio, which allows local radio stations to offer multiple streams of content, has also been launched across the nation.

Unencumbered by government regulation, the Internet also has become a very important source of national and local news, information, and programming. As discussed in more detail in the next section, since July 2003, new subscription and non-subscription video services, some utilizing the Internet and others utilizing platforms like telephone lines and mobile spectrum, are becoming a reality for more and more consumers and advertisers. The changes since July 2003 have been staggering and add innumerable choices of available media for consumers and advertisers.

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<sup>103</sup> 2006 TV & CABLE FACTBOOK at F-2.

<sup>104</sup> *Id.* at E-2 and E-1.

<sup>105</sup> *Twelfth Annual Video Report*, 21 FCC Rcd at 2506-07.

<sup>106</sup> *Id.* at 2507.

At the same time, results in the newspaper industry have been “more mixed.” While the number of daily newspapers has declined by 17 percent and experienced a decline in circulation since 1975, smaller, more targeted, and typically non-daily newspapers have continued to grow and have reached an even greater level in number and circulation.<sup>107</sup>

To make clear that the profusion of media and available content exists not just at the national, but also at the local, level, Media General again has conducted an extensive survey to catalog the other media outlets available in the six markets in which it owns both a newspaper and a television station. As noted above, these markets range in size from Tampa, which is the 12th ranked DMA, to Panama City, Florida, which is now the 157th DMA. This survey accordingly provides a valuable overview of media conditions across all market sizes. The information demonstrates that each of Media General’s six cross-owned markets has experienced the same explosion in media growth that has characterized the United States media market as a whole. As is also true of the national scene, diversity in each of Media General’s co-owned markets has been enhanced greatly by the entry of numerous new media services that were not present in 1975. Most importantly, review of the entire panoply of media offerings in each market -- both the “traditional” services that existed as of 1975 and the newer outlets that are being launched -- shows clearly that each market benefits from extensive pluralism and diversity in the availability of electronic and print content.

*Broadcast Television.* As shown by the chart attached as Appendix 7 and the market-by-market listings attached as Appendices 9 through 14, free over-the-air broadcast video services

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<sup>107</sup> Newspaper Association of America: The Source – Newspapers by the Numbers, at <http://www.naa.org/theforce/14.asp> (last visited Oct. 18, 2006); see Editor & Publisher, 2006, *International Yearbook*, Part 2 at xi. For an account of the universal downturn in fortunes faced by newspapers worldwide, see “Who Killed the Newspaper?” & “More Media, Less News,” *The Economist*, Aug. 26-Sept. 1, 2006, at 9 & 52-54, respectively.

have grown dramatically since 1975. The number of broadcast television outlets in all of Media General's co-owned markets -- both large and small -- has increased since 1975; the number of television stations has at least doubled in four of the six markets.<sup>108</sup> The Tampa DMA, where in 1975 there were four commercial and two noncommercial television stations, now has 12 commercial and two noncommercial television stations; of the six convergence markets, Tampa has experienced the greatest growth in the number of television outlets. The Myrtle Beach-Florence and Panama City DMAs have experienced the greatest percentage increase; Myrtle Beach-Florence has grown from two to a total of eight television stations, and Panama City has grown from two to a total of six stations over the last three decades.

Radio. As shown by the chart attached at Appendix 7, the number of radio stations in each of Media General's cross-owned markets has increased greatly since 1975. While the redefinitions of radio markets over the last three decades certainly make direct comparison of the number of stations per market difficult, the data plainly show that these large groups of radio stations are also highly diverse. As shown in the summary charts at the front of each market's appendix, the overall number of stations in each market ranges from a high of 49 commercial and four noncommercial stations in the radio metro markets of Myrtle Beach and Florence, to a "low" -- if it can be called that -- of 16 commercial and four noncommercial radio stations in the Panama City radio metro market.<sup>109</sup> In terms of content, the markets are also extremely diverse. The radio stations in the Tampa metro radio market offer 32 different formats, stations in Roanoke offer 31, those in Tri-Cities 26, those in Myrtle Beach and Florence 42, those in Columbus 16, and those in Panama City 18.

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<sup>108</sup> Appendix 7.

Cable Television. Of the more “traditional” legacy FCC-regulated media that were present in the Media General convergence markets in 1975, cable has experienced the greatest growth over the last three decades. All of the Media General convergence markets had cable penetration under 30 percent in 1975, and now all markets have much higher cable penetration rates.<sup>110</sup> Specifically, Tampa’s cable penetration has skyrocketed from 13 percent in 1975 to 75 percent today; Roanoke has gone from 12 to 55 percent; Tri-Cities from 24 to 72 percent; Myrtle Beach-Florence from 24 to 71 percent; Columbus from 27 to 76 percent; and Panama City from 27 to 65 percent.<sup>111</sup>

This dramatic increase in cable penetration has spurred a corresponding growth in program offerings, particularly locally and regionally originated program offerings, by all the different cable systems available in each Media General convergence market. These extensive sources of local and regional information are detailed at length in Appendix 8, but highlights include the following:

- Tampa. Two local 24-hour news channels -- Bay News 9 and SNN Local News, the latter produced in conjunction with the *Sarasota Herald-Tribune* -- are available. SunSports and Fox SportsNet Florida offer regional programming, targeting Florida sports fans with game and event coverage, offering sports talk shows and reports, and providing a daily 30-minute public affairs show. Hillsborough County’s HTV 22 municipal channel provides a daily news update. Pinellas County offers a weekly 30-minute news program, “Inside Pinellas.” As noted in Appendix 8, there are numerous other locally originated public affairs offerings.
- Myrtle Beach/Florence. Subscribers to a number of systems in the DMA receive “Southern Style,” a daily 30-minute mid-day locally produced talk and interview show available Monday through Friday. Others receive

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<sup>109</sup> See Appendices 9 through 14. The radio metro market is often a somewhat smaller area than a television DMA, so there are generally more radio stations in each DMA than are indicated in each of these Appendices.

<sup>110</sup> Appendix 7.

<sup>111</sup> *Id.*



“News 14 Carolina,” a regional 24-hour news channel. Some systems offer “Coastal Today,” a weekly 30-minute program discussing local educational issues. Included among additional locally originated programming listed in Appendix 8 are Monday afternoon and Friday evening religious programs.

- Columbus. In this market, Troy University, on a year-round basis, produces and offers nightly news programming at 5 p.m., “TrojanVision Nightly News,” which is rebroadcast at 6:30 p.m. and 10:30 p.m. In all but the summer months, “TrojanVision News at Noon” also presents news updates and reports at noon each weekday. The same channel covers local athletic events and concerts. “CCG-TV Newswatch” provides local in-depth government news in a twice-monthly program. Regional sports programming is available over Fox Sports Net South.

This locally originated content now competes with sources unheard of in 1975.

New FCC-Regulated Services. Since 1975, the FCC’s authorization of entirely new media services has brought a profusion of new content sources to Media General’s six convergence markets. Each market now receives local over-the-air video programming from Class A and low-power television stations, providers that did not begin to offer service until the 1980s and 1990s. As shown by the charts in Appendices 9 through 14, all Media General convergence DMAs have at least one Class A television station. Tampa has seven, Roanoke three, Tri-Cities six (one silent), Myrtle Beach-Florence two, Columbus one, and Panama City two. The number of low-power television stations is greater, with Tampa having 11; Roanoke seven; Tri-Cities and Myrtle Beach-Florence, each four; Columbus one; and Panama City seven.<sup>112</sup> Based on materials on file with the FCC, a majority of these stations report that they do not simply rebroadcast the signals of other full-service stations. Thus, they can be counted as truly new local voices.

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<sup>112</sup> These counts include stations with silent STAs pending, which applies in all but Columbus. In each of the other five markets, only one station was dark, with the exception of Tampa where the silent STA count was three and Panama City where it was four. Nonetheless, in all these markets a handful of competitors remain on air.

Each of the nation's two DBS providers, DirecTV and DishNetwork, also reach all of Media General's co-owned markets, bringing viewers a choice between two different satellite-delivered slates of one hundred-plus channels and a subscription alternative to cable television. DirecTV subscribers in four out of six Media General convergence markets have available "local-into-local" programming; DishNetwork subscribers in five out of six of the markets have access to "local-into-local" programming.

On the audio side, satellite delivered radio similarly delivers hundreds of channels and, in many markets, includes local content inserts. Many listeners in Media General's convergence markets can already receive, and others will soon receive, new multi-streamed programming available over HD radio, additional channels provided by local radio broadcasters. Tampa currently has 12 HD stations, seven of which provide multicast programming; Roanoke has three HD stations, two of which multicast.<sup>113</sup> Listeners in all six convergence markets benefit from hyper-local low power FM service, which has come on line in only the last half decade. Intended as a community-based new medium, LPFM stations bring new local programming to Media General's convergence markets. Tampa has three such stations; all of the other five markets have two licensed LPFM facilities, except for the Tri-Cities DMA, which has one LPFM station.

Internet. Of all the new media entrants that are bringing diversity to consumers in Media General's convergence markets, the Internet offers the largest volume of news and new information. Nonexistent when the 1975 Rule was adopted, the Internet has grown rapidly over the last 15 years, bringing viewers access not only to information services offered on a national basis, but as shown immediately below, a host of local information so diverse and extensive that

its textual content approximates, from an information standpoint, the establishment of at least one newspaper in each of Media General's markets. As the section after next details, the Internet, along with other new platforms, has recently begun bringing the average consumer diverse video programming from "traditional" and newer media sources. Given all the video content that it now offers, the Internet alone can also be said to function as the equivalent of at least another television station per market.

**E. In the Last Several Years, Internet Access, Use, and Influence Have Skyrocketed, and the Ever Growing Number of Locally Established Internet Sites Offers a Wealth of General Interest and Specialized Niche Information.**

As noted above, the United States Court of Appeals for the Third Circuit made clear that the FCC should consider the "Internet [as] contribut[ing] to viewpoint diversity"; the court raised only "the question of degree."<sup>114</sup> In the last several years, studies of Internet use and the burgeoning development of numerous sites have underscored the Internet's contribution to viewpoint diversity, but, more than anything, have mooted the question of degree, establishing once and for all the significance of the Internet as an available source of diverse news and information to the American consumer.

Internet penetration has risen dramatically since Media General first began advocating repeal of the 1975 Rule. The latest studies on this subject place overall Internet penetration in the 70-percent range. The USC Annenberg School's Center for the Digital Future reports that, in 2005, Internet access rose to its highest level in the five years that Annenberg had been studying the issue, showing 78.6 percent of Americans go online.<sup>115</sup> The Pew Internet & American Life

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<sup>113</sup> IBiquity Digital/HD Radio, Find HD Radio Stations Near You, at [http://www.ibiquity.com/hd\\_radio/hdradio\\_find\\_a\\_station](http://www.ibiquity.com/hd_radio/hdradio_find_a_station) (last visited October 17, 2006).

<sup>114</sup> *Prometheus*, 373 F.3d at 400.

<sup>115</sup> Center for the Digital Future, USC Annenberg School, *Fifth Study of the Internet by the Digital Future Project Finds Major New Trends in Online Use for Political Campaigns* (2005)

Project found that in the four years leading up to its most recent March 2006 report, overall Internet penetration had risen from 58 percent of adult Americans to 70 percent of adult Americans.<sup>116</sup>

Equally important, these and other studies have found that the Internet plays a vital role in Americans' receipt of news and in their political decision making. According to the Pew Report, for those users who are most heavily engaged with the Internet -- high-powered broadband users whom Pew says constitute 44 percent of all Internet users who get news on a typical day -- "the [I]nternet is a prime news source."<sup>117</sup> Some 71 percent of these users get news online on an average day.<sup>118</sup> Statistics show online news is a more regular part of the daily news drill for these users than is the local newspaper.<sup>119</sup> Of the wider universe of overall adult Internet users, Pew reports that 35 percent, or about 50 million adults, check the news online on a typical day.<sup>120</sup> While the majority of these typical Internet users turn to "traditional" media organizations, a sizeable 22 percent, or almost one quarter, report going to "non-traditional news sites."<sup>121</sup> "Traditional" news sites include national news organizations, portal websites like Yahoo or Google, local daily newspapers, local television stations, and national newspapers;

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("USC Study"), abstract at [unnumbered] 2, available at <http://www.digitalcenter.org/pdf/Center-for-the-Digital-Future-2005-Highlights.pdf> (last visited Oct. 18, 2006).

<sup>116</sup> John B. Horrigan, *Online News: For Many Home Broadband Users, the Internet is a Primary News Source* (2006) ("Pew Report") at i, available at [http://www.pewinternet.org/PPF/r/178/report\\_display.asp](http://www.pewinternet.org/PPF/r/178/report_display.asp) (last visited Oct. 18, 2006).

<sup>117</sup> *Id.* at ii.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at i.

<sup>120</sup> *Id.* at 1.

<sup>121</sup> *Id.* at iv.

“non-traditional” sites include not only foreign sources, but news blogs and alternative news organizations.<sup>122</sup>

Internet content has now become influential in the political and civic discourse of Americans. A majority of Americans -- Internet users and non-users alike -- agree that going online has become important for political campaigns and in political decision making. Last year, 60.4 percent of Internet users (and 34.6 percent of non-users) agreed that by using the Internet, people can better understand politics.<sup>123</sup> The USC Annenberg study also found that the fastest growing use of the Internet was among Americans with the lowest income; in 2005, Internet use in this group jumped to 61 percent of respondents.<sup>124</sup>

Actual use patterns confirm the growing political influence of the Internet. Some 41.1 percent of Internet users reported going online to gather information about the 2004 Presidential campaign.<sup>125</sup> While 39.5 percent of these users consulted “traditional” media sites, 27.1 percent went directly to candidates’ sites.<sup>126</sup> As the USC study concluded, “[t]he Internet is providing a direct conduit through which office seekers can reach voters, without media gatekeepers sifting and interpreting politicians’ messages.”<sup>127</sup>

Media General has long contended that the Internet, with both its media-provided and more “unfiltered” content, needs to be counted as a competing source of diverse information, both as a matter of sound legal reasoning and common sense. In its six convergence markets, Media General has seen a consistently accelerating rise in the number of locally created Internet

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<sup>122</sup> *Id.* at iv and 12.

<sup>123</sup> *USC Study* at [unnumbered] 2.

<sup>124</sup> *Id.* at [unnumbered] 3.

<sup>125</sup> *Id.* at [unnumbered] 2.

<sup>126</sup> *Id.*

sites. To demonstrate this profusion, Media General has collected and categorized scores of sites available, on a local basis, in each of its convergence markets. From a content standpoint, these sites can be grouped into many of the same categories or section headings as appear in a local newspaper.<sup>128</sup> These sites offer a wealth of diverse information about local communities. As many as one-third of the sites offer continuously updated locally-generated content. Some of the information is of general interest, such as news, weather, and traffic information; other sites offer news clearly designed for niche audiences, such as hobbyists, outdoorsmen, wine enthusiasts, and racing car fans. The news on some sites covers recent events, provides information about upcoming occasions, or provides specific and very targeted material intended to appeal to niche groups.

In each market, many local sites, both individual blogs and others established by local institutions, allow for the exchange of ideas or discourse on current political and civic issues. Sites established by traditional political parties include opinions on candidate elections and other ballot initiatives. More specialized sites address gay rights, racial issues, environmental, and other concerns. Numerous sites allow the posting of opinions.

Media General is acutely aware of the debate over the extent to which the Internet should factor in the FCC's analysis of media ownership reform. Opponents of liberalized ownership rules would limit any consideration of the Internet simply to local news sites that are separate and apart from those established by "traditional" media. Even the number of these locally based, alternative sites, however, is growing rapidly.

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<sup>127</sup> *Id.*

<sup>128</sup> Internet Charts, Appendices 9 through 14. These categories include local news; weather and media; business; chambers of commerce; classifieds; civic clubs; culture, recreation, and sports; education; emergency services; government; home services/food; hospitals and health; libraries;

Internet sites, whether deemed “media” Internet sites or independent news sites, put a virtually unlimited quantity of information at a user’s fingertips. Even if the debate is restricted to only “independent” or non-media sites, as some would suggest, that category is growing. For instance, sites operated by the Independent Media Center (“IMC”), a source that the Third Circuit cited, have multiplied by seven and one-half times in the last two years. Numbering just eight when the court cited them as an acceptable example in 2004, domestic U.S. IMC sites now number 60, and they are increasing.<sup>129</sup> Other local news sites -- such as [www.backfence.com](http://www.backfence.com) and [www.topix.net](http://www.topix.net) -- are taking off around the country. “Backfence,” which offers local news and postings, is now available throughout the Washington, D.C. area and in California; as its “home page” makes clear, it is soliciting interest in new communities. “Topix.net” offers local content in many additional communities around the country. “Topix.net” sites are available, for example, in every one of Media General’s six convergence markets. In Tampa and Roanoke, there are two additional local news sites in each market, unaffiliated with other media. In the Tri-Cities DMA, an “independent” sports news site brings residents information about local high school and collegiate athletic activities. The Myrtle Beach-Florence DMA also has a local news site, unaffiliated with other media. All of these sites offer a wealth of local content, as do the sites owned by more “traditional” media. Moreover, most of the sites affiliated with “traditional” media typically provide a substantial amount of original content, separate and deeper than that on their companion print or broadcast platforms. As such, these sites, even though affiliated with “traditional” media deserve to be considered in their own right.

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political parties; religion; style and society; tourism; transportation and infrastructure; utilities; user-supplied content; and miscellaneous.

<sup>129</sup> *Prometheus*, 373 F.3d at 406 n.36. For current IMC sites, *see* <http://www.indymedia.org/en/index.shtml> (last visited Oct. 22, 2006).

Combined with the proliferation since 1975 of “traditional” outlets and the inauguration since then of other entirely new FCC-regulated services, this multiplicity of locally generated Internet sites -- both general in nature and of interest to niche audiences -- assures that any Commission concerns over diversity have been met. Internet sites are very inexpensive and quick to establish;<sup>130</sup> this ease of entry is important in further ensuring diversity. Once established, Internet sites are also relatively inexpensive to maintain.<sup>131</sup> Given the ease of entry and low barriers to the provision of continued service, economies of scale become unimportant, and accelerating profusion is further guaranteed.

In short, any conjectural concern the FCC may have had three decades ago about the need to protect diversity through adoption of the 1975 Rule has been quashed by the advent of the Internet. This new technology, in itself, has ensured that divergent and antagonistic viewpoints are available. Because of the burgeoning Internet, the FCC has even less justification for refusing to completely eliminate the 1975 Rule.

**F. Since 2003, There Has Been an Even Greater Explosion in Sources of Digital Diversity, an Explosion That Will Only Continue in Coming Months, Creating Intense Competition for Audiences and Potentially Bypassing More Traditional Media Platforms.**

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Since release of the *July 2003 Decision*, an even greater explosion of media and content delivery options has occurred than in the years leading up to that decision, a greater increase in available media sources, in fact, than in the period from 1975 to 2003. Not only have nascent

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<sup>130</sup> For example, one of the most well-established internet companies, Yahoo, offers a full-service package that includes domain name registration, web site creation and hosting, and 200 e-mail addresses to match the domain name registration. This service is currently available for \$8.95 per month for two months (\$11.95 per month thereafter), with set-up fees waived. Sites can be set up within minutes. See *Yahoo! Web Hosting*, at <http://smallbusiness.yahoo.com/webhosting/compare/php> (last visited October 17, 2006). Less expensive registration and hosting options are also available from other companies.



platforms that were discussed in 2003 simply as futuristic ideas become a reality, in many cases in Media General's convergence markets, but entirely new and additional forms of media and content delivery, unheard of in 2003, are now available to consumers. While the discussion below provides just a cursory review of these new entrants, they all -- individually and collectively -- bring increased competition for audiences against which Media General and other more "traditional" players must fight for audience and advertisers.

These new entrants guarantee a virtually unlimited range of varied and diverse content, much of it when, where, and how consumers want it. The new entrants lay to rest once and for all, as if the growth in more "traditional" media were not already enough to do so, any doubt that today's media world is sufficiently diverse and sufficient alternative media and other sources available to ensure that repeal of the 1975 Rule will have absolutely no harmful effect. Indeed, without repeal of the 1975 Rule, it becomes even more questionable whether the entities regulated by that rule will be able to hang onto their gradually eroding audience shares, enhancing the risk to the delivery of free, local content. Some of these new competitors for audience, but by no means an exhaustive list, are as follows:

*New Facilities-Based Video Providers.* In the last several years, both Verizon and AT&T have launched ambitious efforts to provide video over new broadband systems being constructed throughout the country. Although each provider uses slightly different technical models to reach consumers, both intend to provide multiple streams of high-definition video.<sup>132</sup> Verizon's new "FiOS TV" service has already launched in Texas, Virginia, and Florida, and, as of mid-September 2006, Verizon had obtained 131 local video franchises, allowing the initiation of

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<sup>131</sup> See *id.*; see also IPower, at <http://www.ipower.com/> (last visited October 17, 2006) (offering domain names for \$6.50, setup for \$10.00, and hosting for as little as \$3.95 per month).

<sup>132</sup> "Tuning in to the Future?," *The Economist*, Oct. 14-20, 2006, at 14-15.

service.<sup>133</sup> Last month, the California legislation passed, and this month, Gov. Arnold Schwarzenegger signed into law, a new statewide video franchising program, which will facilitate competitive video entry; with this, California becomes the eighth state to take such a step, following Indiana, Kansas, New Jersey, North Carolina, South Carolina, Texas, and Virginia, which together have one third of the nation's population.<sup>134</sup> FiOS TV is already available in an eastern swath of Media General's Tampa market, where it serves consumers in four counties, including the City of Tampa.

The benefits of AT&T's new "Project Lightspeed" efforts and its "U-Verse" telco-based video service, which was launched this summer, have not yet reached Media General's convergence markets, but this endeavor is viewed as a competitive threat to all video suppliers; as announced earlier this summer, AT&T has also launched another video service, "Homezone," a converged Internet and television service, which relies on resale deals with satellite television firms and is designed as an alternative for customers living in areas without access to new land-based networks.<sup>135</sup>

In addition, since 2003, cable overbuilders -- such as RCN and Knology -- that offer services in competition with traditional cable systems have continued to grow. Overbuilders provide service in three of Media General's six convergence markets. In addition, the FCC, earlier this summer, gave its final blessing to rules for an entirely different alternative delivery mode, broadband over power line systems, which, in the words of Chairman Martin, "holds great

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<sup>133</sup> *Id.*; "Verizon's fiber video deal," *Communications Daily*, Sept. 15, 2006, at 11.

<sup>134</sup> "Cal. Gov. Arnold Schwarzenegger signed," *Communications Daily*, Oct. 2, 2006, at 9; "Passage of Cal. Video Bill Expands Franchise Reform to 1/3 of U.S. Population," *Communications Daily*, Sept. 5, 2006, at 5-6.

<sup>135</sup> "Tuning in to the Future?," *The Economist*, Oct. 14-20, 2006, at 15; "AT&T launched Homezone," *Communications Daily*, July 20, 2006, at 17.

promise as a ubiquitous broadband solution that would offer a viable alternative to cable, digital subscriber line, fiber, and wireless broadband solutions.”<sup>136</sup>

Mobile Video Transmissions. For over a year, cell phone providers have been offering video transmissions to their mobile customers. Verizon Mobile’s V-Cast, for example, offers news, weather, sports and entertainment clips to subscribers throughout its service areas.<sup>137</sup> Cingular also offers video services to its cellular subscribers and recently reached a deal with HBO under which episodes of series such as “Sex and the City” and “Curb Your Enthusiasm” will be available exclusively over Cingular’s mobile service.<sup>138</sup> SprintNextel is also providing mobile video to its subscribers’ cell phones, such as coverage of NFL games; it began the season by streaming the Pro Football Hall of Fame induction ceremonies in early August 2006 live on its PCS Network through its NFL Mobile application.<sup>139</sup>

An entirely different method of mobile video transmission is expected to launch in 2007, with inauguration of Qualcomm’s MediaFLO service, which just this month obtained an FCC waiver of existing interference standards so that it can provide live video streams to mobile phones over a nationwide network.<sup>140</sup> The service will roll-out in coming months on a market-by-market basis.

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<sup>136</sup> Statement of Chairman Kevin J. Martin, *Amendment of Part 15 Regarding New Requirements and Measurement Guidelines for Access Broadband Over Power Line Systems, Memorandum Opinion and Order*, ET Docket Nos. 04-37 and 03-104, FCC 06-113, released Aug. 7, 2006.

<sup>137</sup> Verizon Wireless, V-Cast, at <http://getitnow.vzwshop.com/index.aspx?id=vcast> (last visited October 18, 2006).

<sup>138</sup> “HBO Wires Cingular Deal, Sets Series Plans,” *Television Week*, July 17, 2006, at 3.

<sup>139</sup> “Sprint Nextel will broadcast coverage,” *Communications Daily*, Aug. 3, 2006, at 8.

<sup>140</sup> *Qualcomm Incorporated Petition for Declaratory Ruling, Order*, WT Docket No. 05-7, FCC 06-155, released Oct. 13, 2006.

DBS providers have not been left out of the rush to provide mobile video content. DirecTV now transmits local stations to mobile DirecTV subscribers in automobiles in the 142 markets where it carries “local-into-local” programming.<sup>141</sup> (These include four of the five Media General convergence markets that receive “local-into-local” programming.) Prior to this summer, in-vehicle DirecTV had provided national content but not the local channels available through this DBS provider.<sup>142</sup>

Another unique offering, “Gas Station TV,” which proposes to reach consumers at the gas pump, has also launched in numerous locations around the country, offering sponsored IP-delivered digital news, weather, traffic, and short-form entertainment programming; the service is achieving unexpectedly high viewer approval.<sup>143</sup> In addition, the FCC recently sought comment on waiver requests necessary for Clarity Media Systems, LLC to offer “Trucker TV,” over frequencies currently used for BAS and CARS operators, at truck stops in nine states.<sup>144</sup>

Podcasting. The first sign that the traditional broadcast networks would begin to offer their programming over entirely new platforms came with the announcement just over one year ago that Disney had reached a deal with Apple Computer to allow consumers to watch ABC television hits on their iPod media players.<sup>145</sup> This first of the deals between a “traditional” broadcast network provided the model for delivery of television content over new platforms; it has been followed by a quick and lengthy succession of “old media-new media” deals, all of which make television content available in more ways to consumers and presage the erosion of

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<sup>141</sup> “DirecTV is transmitting,” *Communications Daily*, Aug. 24, 2006, at 10.

<sup>142</sup> *Id.*

<sup>143</sup> “Nielsen data support,” *Communications Daily*, Oct. 3, 2006, at 11.

<sup>144</sup> FCC Public Notice, “Waiver Requests by Clarity Media Systems, LLC To Operate CARS Stations at Flying J Travel Plazas,” DA 06-1664, Aug. 23, 2006.

<sup>145</sup> “The Gadget That Transformed TV,” *Television Week*, Oct. 9, 2006, at 13.

the old precepts upon which the 1975 Rule, other FCC ownership rules, and the network-affiliate relationship have been founded.

As a result of the deal, ABC News videos now are on sale via iTunes. The catalog of available videos includes news specials, interviews, and “raw footage”; ABC News has reported a “tremendous response” to these World News podcasts.<sup>146</sup> Shortly after the ABC deal, NBC followed with iTunes downloads of “The Office,” and the show obtained its highest prime-time ratings to date as a result.<sup>147</sup> Numerous other programmers and content providers have followed suit. Downloads of broadcast radio content, including local news, have been a market fact for some time,<sup>148</sup> and the potential for more “traditional” content joining content from new suppliers in downloads is limited only by consumer demand.

IPTV. Also within the last year, “traditional” media outlets like television networks and stations have begun, in conjunction with broadband suppliers and Internet companies, to put their content out over internet-protocol television, or IPTV. Many of these deals involve platforms or portals that have not previously offered video, or offered only user- or consumer-supplied video in the past. The result has been an uncountable number of video offerings on the web, ranging from content produced by national players to hyper-local fare. Overall, this change means that free-over-the-air content is moving to subscription platforms; while this migration, in many cases, has not yet supplanted the availability of the content over free platforms, it is conceivable that increasing amounts of previously free content will migrate to subscription-only availability, as has been the case in “traditional” broadcasting with the move, for instance, of “Monday Night

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<sup>146</sup> “ABC News videos now on sale,” *Communications Daily*, Aug. 23, 2006, at 11.

<sup>147</sup> “A Year of Deals,” *Television Week*, Oct. 9, 2006, at 13.

<sup>148</sup> See [www.wtopnews.com](http://www.wtopnews.com) (last visited Oct. 18, 2006).

Football” from ABC to ESPN and, next year, the shift of the Major League Baseball playoffs from free television networks to cable’s TBS.<sup>149</sup>

Of the “traditional” television broadcast networks, CBS led the way in the IPTV migration when, in January 2006, CBS, the National Basketball Association, and Google unveiled the Google Video stream; since then, Google has tested an upfront ad sales system for TV and syndicated video clips from MTV Networks across the web.<sup>150</sup> CBS also had success in offering video streaming of the NCAA’s “March Madness – Road to the Final Four”; NBC reported similar success this past summer in streaming coverage of Wimbledon tennis matches.<sup>151</sup> Google’s announcement earlier this month of its \$1.6 billion deal for control of YouTube signaled a new “elephant in the control room” as Google sought to harness the popularity of user-supplied video, an entirely new genre.<sup>152</sup> Notably, no communications regulator needed to pass on the launch of that ownership combination.

Meanwhile, CBS took additional routes to making its news programming available over IPTV. This summer, CBS announced that the CBS Evening News with Katie Couric would be streamed over the Internet.<sup>153</sup> Most recently, CBS announced that it was making local news available over the Internet by signing a deal with Yahoo to provide local news video from CBS’s

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<sup>149</sup> “ESPN Ready for Some Football,” *Television Week*, July 31, 2006, at 29; “Fox’s Prime Time Helped by Deal, New Baseball Pacts Include Playoffs for Turner Sports,” *Television Week*, July 17, 2006, at 8.

<sup>150</sup> “A Year of Deals,” *Television Week*, Oct. 9, 2006, at 13.

<sup>151</sup> “NBC Sports and MediaZone Team To Offer Live Sports Coverage Via Co-Branded Broadband Video Channel,” *Market Wire*, Sept. 13, 2006; “Hoop Dreams, Internet Streams,” *Television Week*, Mar. 20, 2006, at 1.

<sup>152</sup> “Big Changes Ahead,” *Broadcasting & Cable*, Oct. 16, 2006, at 14.

<sup>153</sup> “The CBS Evening News Will Start Streaming as a Live Simulcast Sept. 5,” *Communications Daily*, Aug 18, 2006, at 14.

16 owned-and-operated television stations available at Yahoo Inc.'s Yahoo News portal.<sup>154</sup>

Yahoo will sell spots linked to the news reports; the spots, which will appear on Yahoo's news pages for each station's market, will play before the news reports, and viewers will not be able to skip them.<sup>155</sup> The CBS-owned stations already offer more than 10 hours of video on their own web sites daily, including entire newscasts, individual segments, and web-only news reports.<sup>156</sup>

Just a few weeks before announcing the Yahoo deal, CBS had said that the CBS Television Network, Showtime Networks, and CSTV Networks would offer short-form news, sports, and entertainment programming to YouTube.<sup>157</sup> Not to be outdone, ABC, NBC, and Fox have launched similar IPTV initiatives for their news and entertainment programming.<sup>158</sup> Fox, unique in this regard among traditional networks, in late 2005 paid \$580 million to acquire the social networking site "MySpace.com," bringing more mainstream credibility -- both in users and advertisers -- to that relatively new competitor for audience. In August of this year, Google beat out its rivals for the rights to sell ads on MySpace.com.<sup>159</sup>

This trend in new content development and "traditional" content migration, while initially (but not exclusively) involving national programs, will soon begin to affect locally-originated content on an equally wide-scale basis. Overall, the result is heightened competition for newspaper owners and television licensees who find their ability to collaborate in new and

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<sup>154</sup> "Business Brief: CBS Corp.," *The Wall Street Journal*, Oct. 17, 2006 at B2.

<sup>155</sup> "Yahoo, CBS Link Internet, Stations," *Television Week*, Oct. 16, 2006 at 1.

<sup>156</sup> *Id.* at 49.

<sup>157</sup> "CBS and YouTube Strike Strategic Content and Advertising Partnership," *Market Wire*, Oct. 9, 2006, available at <http://www.lexis.com>.

<sup>158</sup> "A Year of Deals," *Television Week*, Oct. 9, 2006, at 13. *See also* <http://www.nbc.com/Video/rewind> (last visited Oct. 22, 2006).

<sup>159</sup> "Yahoo, CBS Link Internet, Stations," *Television Week*, Oct. 16, 2006, at 49.

innovative ways under common ownership totally and indefensibly blocked. The threat, as shown in the next section, is to the continued availability of free and local news content.

**G.     Repeal of the 1975 Rule is Necessary To Stem Erosion in the Provision of Free Broadcast Content and Ensure That Free and Local News Remains Available in Markets of All Sizes.**

As noted above, the FCC has already found that the 1975 Rule inhibits the delivery of local news and, therefore, harms the statutory goal of localism. Relying on diversity to justify retention of any vestige of the 1975 Rule would now clearly have the same effect.

The new and intense competition for audiences affects broadcast players of all scope and sizes -- national broadcast networks, large market broadcasters, and small and medium market broadcasters. Medium and small market broadcasters, in particular, have experienced financial challenges over the last several years. The already high cost of producing local newscasts in these markets has continued to climb. The stations have had to finance their multi-million dollar conversions to DTV facilities. At the same time, these smaller and medium market stations have seen their network compensation decline, in most cases drying up completely or turning into “reverse compensation.” The effect of these financial challenges combined with the new depth of competition has put local news delivery by television stations in serious jeopardy. If not cut back or curtailed completely, the news is now being “outsourced,” through news sharing agreements, to other market rivals.<sup>160</sup>

Repeal of the 1975 Rule is needed to stem and help reverse this trend. Repeal would allow local newspapers, and their journalists who are committed to covering their local communities, to reinvigorate struggling broadcast news operations. Simply put, ensuring continued localism at this point in media history requires repeal of the 1975 Rule. Speculative,

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<sup>160</sup> “Why Local News Is in a Sharing Mood,” *Broadcasting & Cable*, Aug. 7, 2006, at 10.



conjectural concerns about diversity -- all of which have been mooted by technological developments and, unlike localism, do not find explicit justification in the Communications Act -- can no longer stand in the way.

The last week has brought further confirmation of the effect that new digital services and sources are having on broadcast television. NBC Universal's announcement just days ago that it is cutting up to five percent of its workforce and planning to provide lower-cost, unscripted programming in the first hour of prime time, all as part of an effort to slash \$750 million from its budget over the next two years, was taken as a sign of "just how far a once-unrivaled network must now go to stay competitive with YouTube, social networks, video games, and the other upstart media."<sup>161</sup> Another industry commentator said the announcement was "just [an]other indication[] that the present media landscape is vastly different than it was just five years ago, and does not even resemble what it was twenty to thirty years ago."<sup>162</sup> He called the announcement a "recogni[tion] that consumer choices are so plentiful that maybe they cannot profitably provide the same level and amount of programming that they have historically provided."<sup>163</sup>

The NBC Universal development has not been the only recent announcement to call into question the viability of broadcasting in the face of the rise of cable networks, the Internet, and myriad other ways that programming now reaches consumers. The past year has brought announcements that CBS is selling dozens of its small-growth radio stations and instead putting

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<sup>161</sup> Frank Ahrens, "NBC Taking Big Step Back from Television," *The Washington Post*, Oct. 20, 2006, at A1.

<sup>162</sup> Mark Fratrik, "Over-the-Air Television Networks: Adapting to the Cold Realities," *BIA Perspectives*, Oct. 20, 2006, available at [http://www.bia.com/data\\_perspective\\_061027.html](http://www.bia.com/data_perspective_061027.html) (last visited Oct. 23, 2006).

<sup>163</sup> *Id.*

its resources into expanding its Internet and mobile offerings.<sup>164</sup> Similarly, Disney has sold its ABC radio stations, merging them with Citadel Broadcasting Corp.'s holdings in a \$1 billion-plus deal.<sup>165</sup> Clear Channel Communications, the nation's largest radio operator, has reportedly also been considering selling off radio stations in smaller markets.<sup>166</sup>

Television groups have taken similar steps. In September, the New York Times Company, which in the proceedings leading up to the *July 2003 Decision* had argued for reform of the 1975 Rule, announced that it was putting its nine network-affiliated television stations and their related properties up for sale.<sup>167</sup> LIN TV has entered into an agreement to sell its Puerto Rican assets and announced that it is switching to a more automated production system, reducing the number of people it takes to put live newscasts on the air and freeing up personnel to handle digital media tasks.<sup>168</sup> The term "Internet bypass" is entering the media lexicon.<sup>169</sup>

Marketplace developments are delivering a consistent, clarion, and pessimistic call about the future of free over-the-air broadcasting and its delivery of free local news. Repeal of the 1975 Rule would help to reverse some of this negative trend by freeing newspaper owners and broadcasters to enter into ownership arrangements that would eliminate overlapping costs, while at the same time placing these savings back into local news production just as Media General has

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<sup>164</sup> See, e.g., "Wilks Bcst. Group Will Buy 7 CBS Radio Stations," *Communications Daily*, Oct. 12, 2006 at 9.

<sup>165</sup> "Disney Agreed to Merge ABC Radio With Citadel Bcstg.," *Communications Daily*, Feb. 7, 2006 at 10.

<sup>166</sup> "Changing Its Tune," *The New York Times*, Sept. 15, 2006, at C1.

<sup>167</sup> "The New York Times Plans To Sell Its Broadcast Media Group," *Business Wire*, Sept. 12, 2006.

<sup>168</sup> "NBC Universal Layoffs Bring Spotlight to Industry-Wide Changes," *Communications Daily*, Oct. 20, 2006, at 3; "LIN TV to Sell Puerto Rico Operations," *Press Release*, available at [http://www.corporate-ir.net/ireye/ir\\_site.zhtml?ticker=TVL&script=410&layout=-6&item\\_id=918570](http://www.corporate-ir.net/ireye/ir_site.zhtml?ticker=TVL&script=410&layout=-6&item_id=918570) (last visited Oct. 21, 2006).

done in its efforts to bring quality local news and information to the largest possible audiences in its markets.

**V. The 1996 Telecommunications Act Sets a High Standard of Proof for Retention of the 1975 Rule, and, Given the Clear Competitive Threat Now Posed to Broadcast Stations and Their Free and Local Content by New Media Players, That Standard Can No Longer Be Met.**

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Section 202(h) of the Telecommunications Act of 1996 requires the FCC to evaluate market conditions every four years and determine whether any of its ownership rules remain “necessary in the public interest as the result of competition.”<sup>170</sup> The FCC must “repeal or modify any regulation” that is no longer in the public interest.<sup>171</sup> By its terms, this provision imposes substantive criteria against which the FCC must justify its rules (“necessary in the public interest as the result of competition”), a required remedy (“modify or repeal”), and an explicit statutory deadline for action (“quadrennially”).<sup>172</sup> In light of the overwhelming “competition for eyeballs” chronicled above, it is clear the 1975 Rule is no longer “necessary in the public interest as a result of competition,” even under the most deferential standard of “necessary” imaginable.

The legislative history of the 1996 Telecommunications Act explains that Congress imposed this new review requirement to deal exactly with the type of competitive milieu now before the Commission. Specifically, Congress concluded that, because of “the explosion of video distribution technologies and subscription-based programming sources . . . Congress and the [FCC] must reform Federal policy and the current regulatory framework to reflect [ ] new

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<sup>169</sup> “Big Changes Ahead,” *Broadcasting & Cable*, Oct. 16, 2006, at 14.

<sup>170</sup> Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 112 (1996), as amended by Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99 (2004).

<sup>171</sup> *Id.*

marketplace realities.”<sup>173</sup> In Congress’ view, the industry even in 1995 was “operating under archaic rules that better suited the 1950’s than the 1990’s,” even though “the broadcast environment today is the most competitive it’s ever been.”<sup>174</sup> More than 10 years later, of course, the environment is intensely more competitive. The regulations governing it, like the 1975 Rule, have become even more anachronistic.

For the FCC’s conclusions in this quadrennial review proceedings to pass appellate muster, those determinations must comply with the mandate of Section 202(h). The specific mandate of Section 202(h) is clear: the FCC must repeal or modify a regulation unless it is affirmatively shown to be necessary in the public interest.<sup>175</sup>

Section 202(h) squarely places on the proponents of continued regulation the burden of persuasion for justifying retention of the 1975 Rule. As the United States Courts of Appeals for the Third Circuit and the District of Columbia Circuit have recognized, the purpose of Section 202(h) is clearly deregulatory, and in adopting it, Congress intended the basic goal of the reviews to be repeal or modification of rules that could no longer be justified as serving the public interest. In its decision in *Prometheus*, the Third Circuit stated that “Section 202(h) requires the Commission periodically to justify its existing regulations...[a] regulation deemed useful when

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<sup>172</sup> The 1996 Act initially required biennial review, which was amended in 2004 to require quadrennial review. *See id.*

<sup>173</sup> H.R. Rep. No. 104-204, at 55 (1995) *reprinted in* 1996 U.S.C.C.A.N. 10, 18-19..

<sup>174</sup> S. Rep. No. 104-23, at 64 (1995) (Statement of Sen. Burns). Senator Burns explicitly included the newspaper/broadcast cross-ownership ban as among the rules he felt needed reevaluation because they “may not be appropriate for tomorrow’s broadcasting marketplace.” *Id.*

<sup>175</sup> *See United States v. Monsanto*, 491 U.S. 600, 607 (1989) (by using “shall,” “Congress could not have chosen [a] stronger word[ ] to express its intent that [action] be mandatory in cases where the statute applied”).

promulgated must remain so. If not, it must be vacated or modified.”<sup>176</sup> In decisions that have included somewhat more colorful rhetoric, the D.C. Circuit has similarly stated that “under §202(h) the Commission may retain a rule only if it reasonably determines that the rule is ‘necessary in the public interest.’”<sup>177</sup> In making such a determination, the Commission must support its decision with “a reasoned analysis.”<sup>178</sup> This analysis must be supported by specific facts in the record.<sup>179</sup> Thus, unless the FCC can make a probative showing on the record that the 1975 Rule is necessary in the public interest as a result of competition, the cross-ownership ban cannot be retained.

The D.C. Circuit has also echoed this interpretation of Section 202(h) in its analysis of Section 11 of the Telecommunications Act of 1996.<sup>180</sup> This analogous section of the 1996 Act requires biennial review of all regulations that apply to providers of telecommunications services. Section 11, much like Section 202(h), requires the Commission to determine every two years whether such regulations are “necessary in the public interest,” and mandates repeal or modification of “any regulation it determines to be no longer necessary in the public interest.”<sup>181</sup> The D.C. Circuit held in 2004 that this section, much like Section 202(h), imposes two

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<sup>176</sup> *Prometheus*, 373 F.3d at 395.

<sup>177</sup> *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1048 (D.C. Cir. 2000) (“*Fox I*”), *rehearing granted*, 293 F.3d 537 (D.C. Cir. 2002) (“*Fox II*”). As the initial opinion had noted, “the mandate of §202(h) might better be likened to Farragut’s order at the battle of Mobile Bay (‘Damn the torpedoes! Full speed ahead.’) than to the wait-and-see attitude of the Commission....” 280 F.3d at 1044. *See also Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002).

<sup>178</sup> *Prometheus*, 373 F.3d at 395.

<sup>179</sup> *Fox I*, 280 F.3d at 1044.

<sup>180</sup> Pub. L. No. 104-104, § 402, as codified at 47 U.S.C. § 11 (2005).

<sup>181</sup> 47 U.S.C.A. § 11 (2001).

obligations on the Commission.<sup>182</sup> First, the Commission must determine “whether the necessity for a regulation continues in light of current market conditions.”<sup>183</sup> Unless the Commission can determine that the regulation remains necessary in the public interest, it must “repeal or modify such regulations.”<sup>184</sup>

Given the growth since 1975 in traditional FCC regulated outlets and, more recently, the profusion of non-regulated video and audio content platforms and services, the FCC cannot make a showing that the public interest justifies retention of the 1975 Rule. As amply demonstrated herein, the 1975 Rule actually harms the public interest by stymieing the growth in free and local content that is made possible by convergence. Retention of the 1975 Rule would perpetuate and exacerbate this harm. The Commission simply cannot meet the statutorily imposed burden of demonstrating under Section 202(h) that the 1975 Rule remains necessary in the public interest in any form, and the rule therefore must be promptly repealed.

## **VI. Newspaper/Broadcast Cross-Ownership Restrictions Are Unconstitutional.**

Over 30 years ago, when the Commission adopted the 1975 Rule, that otherwise constitutionally impermissible rule was believed to be justified by the so-called “scarcity doctrine” enunciated by the Supreme Court in *Red Lion Broadcasting. Co. v. FCC*, 395 U.S. 367 (1969) (“*Red Lion*”). In upholding the now-jettisoned Commission “fairness doctrine” against a First Amendment challenge, *Red Lion* had concluded that the broadcast spectrum is a “scarce resource.” Based on this conclusion, *Red Lion* held that “the Government is permitted to put

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<sup>182</sup> *Cellco Partnership v. FCC*, 357 F.3d 88, 98-99 (D.C. Cir. 2004).

<sup>183</sup> *Id.* at 99.

<sup>184</sup> *Id.* at 99.

restraints on [broadcast] licensees in favor of others whose view should be expressed on this unique medium.”<sup>185</sup>

In 1975, the “scarcity doctrine” was at least debatable. Radio, television, and newspapers were the *only* forms of mass communication. In 1975,

- there was no Internet, email, or broadband service of any type;
- there was no satellite television or satellite radio;
- there were no consumer wireless services (and no cell phones); and
- cable television served less than 15 percent of the nation’s households.

As explained in detail below, in 2006, a starkly different technological landscape exists, one which renders the “scarcity doctrine” a legal dinosaur: the Internet, giving access to billions of web pages, eight million blogs,<sup>186</sup> and streaming video and audio from hundreds if not thousands of radio and television stations and, increasingly, thousands of other sources, is ubiquitous; 86 percent of the nation’s households receive cable and satellite video service, with scores to hundreds of channels typically available; consumer wireless data services (including video transmissions) are available on most new cell phones; and satellite radio is available nationwide.

In 1987, the Commission itself (in carrying out its recognized responsibility to evaluate existing regulations in light of the technological changes) concluded that the “scarcity doctrine” had outlived its justification:

*[T]he Commission, in its task of managing an ever-changing technological and economic marketplace, has the responsibility to consider new developments in reviewing existing, and in applying new, rationales in that marketplace. . . . We*

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<sup>185</sup> *Red Lion*, 395 U.S. at 389-90.

<sup>186</sup> See Media Bureau Staff Research Paper entitled “*The Scarcity Rationale For Regulating Traditional Broadcasting: An Idea Whose Time Has Passed*,” (March 2005) by John W. Berresford (“*Media Bureau Research Paper*”), at 11 & n.62, citing Press Release, *FCC Selects Digital Radio Technology* (Oct 10, 2005), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-227261A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-227261A1.pdf).

further believe that the scarcity rationale developed in the *Red Lion* decision and successive cases no longer justifies a different standard of First Amendment review for the electronic press. Therefore, . . . we believe that the standard applied in *Red Lion* should be reconsidered and that *the constitutional principles applicable to the printed press should be equally applicable to the electronic press*.<sup>187</sup>

Like the Emperor in Hans Christian Anderson’s fairy tale, shorn of the illusory “scarcity doctrine,” the newspaper/broadcast cross-ownership restrictions have no clothes. Without the protection of the “scarcity doctrine,” those restrictions are subject to heightened First Amendment scrutiny, scrutiny they cannot withstand because they serve neither a compelling state interest nor are they narrowly tailored. For the reasons set forth below, the Commission must recognize this reality, and, on this remand, eliminate the unconstitutional restrictions on newspaper/broadcast cross-ownership.

**A. The Sole Justification for Deferential First Amendment Review of the Newspaper/Broadcast Cross-Ownership Restrictions -- the “Scarcity Doctrine” – Is Analytically Flawed and Has Been Rendered Obsolete by Regulatory and Technological Change.**

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Broadcasters are “entitled under the First Amendment to exercise the widest journalistic freedom.”<sup>188</sup> As a result, any restriction “that singles out the press, or that targets individual publications within the press, places a heavy burden on the State to justify its action.”<sup>189</sup> “[E]ven regulations aimed at proper governmental concerns can restrict unduly the exercise of rights protected by the First Amendment.”<sup>190</sup> Moreover, “laws that single out the press, or certain

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<sup>187</sup> *In re Compl. of Syracuse Peace Council, Memorandum Opinion and Order*, 2 FCC Rcd. 5043, 5052-5053 (1987) (“*Syracuse Peace Council*”) (emphasis supplied), *pet. for review denied*, 867 F.2d 654 (D.C. Cir. 1989).

<sup>188</sup> *CBS, Inc. v. FCC*, 453 U.S. 367, 395 (1981) (internal quotation omitted).

<sup>189</sup> *Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575, 592-593 (1983) (“*Minneapolis Star*”).

<sup>190</sup> *Id.* at 592.



elements thereof, for special treatment” must be subject to some measure of heightened scrutiny.<sup>191</sup>

Nine years after *Red Lion*, the Supreme Court was called upon to apply these principles in a First Amendment challenge to the 1975 Rule.<sup>192</sup> In rejecting the challenge and concluding that the 1975 Rule passed constitutional muster, the *NCCB* Court, relying on the “scarcity doctrine” articulated in *Red Lion*, stated:

The physical limitations of the broadcast spectrum are well known. Because of problems of interference between broadcast signals, a finite number of frequencies can be used productively; this number is far exceeded by the number of persons wishing to broadcast to the public. *In light of this physical scarcity, Government allocation and regulation of broadcast frequencies are essential . . . . [G]iven that need, we see nothing in the First Amendment to prevent the Commission from allocating licenses so as to promote the “public interest” in diversification of the mass communications media.*<sup>193</sup>

Thus, the *NCCB* Court rested its decision approving the 1975 Rule on the premise that broadcast spectrum is a uniquely scarce resource that government should regulate differently than any other form of communication. Accordingly, the *NCCB* Court submitted the cross-ownership ban only to extremely deferential rational-basis review, holding that the Commission “acted rationally in finding that diversification of ownership would enhance the possibility of achieving greater diversity of viewpoints.”<sup>194</sup>

*Red Lion* itself had acknowledged that technological advances might render the “scarcity doctrine” obsolete, resting its holding on “the present state of commercially acceptable technology.”<sup>195</sup> In 1984, in *FCC v. League of Women Voters of California*, 468 U.S. 364 (1984)

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<sup>191</sup> *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 640-41 (1994) (“*Turner I*”).

<sup>192</sup> *See NCCB*, 436 U.S. at 796.

<sup>193</sup> *NCCB*, 436 U.S. at 799 (emphasis supplied).

<sup>194</sup> *Id.* at 796.

<sup>195</sup> *Red Lion*, 395 U.S. at 388.

(“*League of Women Voters*”), the Supreme Court noted the continuing criticism of the “scarcity doctrine” resulting from technological change:

The prevailing rationale for broadcast regulation based on spectrum scarcity has come under increasing criticism in recent years. Critics, including the incumbent Chairman of the FCC, charge that *with the advent of cable and satellite television technology, communities now have access to such a wide variety of stations that the “scarcity doctrine” is obsolete. . . .*<sup>196</sup>

In explicitly recognizing that the doctrine’s continued vitality was a rebuttable presumption dependent on the state of technological advance, the Supreme Court stated that it would reconsider the doctrine if there were “some signal from Congress or *the FCC that technological developments have advanced so far* that some revision of the system of broadcast regulation may be required.”<sup>197</sup>

As demonstrated below, the *NCCB* Court’s rebuttable premise that broadcast spectrum is a uniquely scarce resource can no longer serve as a justification for the continued restriction of newspaper/broadcast cross-ownership for at least three reasons. First, the contention that broadcast spectrum is scarce is analytically flawed: it is not more scarce than any other good, meaning that “purported” scarcity does not justify a reduced level of First Amendment scrutiny. Second, regulatory change -- Congress’ decision to limit the Commission’s role in awarding new spectrum -- eliminates any principled basis for the “scarcity doctrine.” Third, technological change leading to the exponential growth in new media outlets has rendered the “scarcity doctrine,” to the extent it was ever justified, obsolete.

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<sup>196</sup> *League of Women Voters*, 468 U.S. at 376 n.11 (emphasis supplied).

<sup>197</sup> *Id.* (emphasis supplied).

**1. NCCB's Reduced Scrutiny of Cross-Ownership Restrictions Was Based on an Analytically Flawed Premise: That Broadcast Spectrum Is Uniquely Scarce.**

The “scarcity doctrine,” upon which *NCCB*’s reduced scrutiny of cross-ownership restrictions is based, applies not only to broadcast spectrum, but to everything else used in commerce; therefore, it provides no basis for the discriminatory treatment embodied in newspaper/broadcast cross-ownership restrictions. Other items used in the delivery of mass communication, including computers, fiber-optic cable, and even newsprint, also are finite. As Judge Bork stated almost 20 years ago,

It is certainly true that broadcast frequencies are scarce but it is unclear why that fact justifies content regulation of broadcasting in a way that would be intolerable if applied to the editorial process of the print media. All economic goods are scarce, not least the newsprint, ink, delivery trucks, computers, and other resources that go into the production and dissemination of print journalism. *Not everyone who wishes to publish a newspaper, or even a pamphlet, may do so. Since scarcity is a universal fact, it can hardly explain regulation in one context and not another.* The attempt to use a universal fact as a distinguishing principle necessarily leads to analytical confusion.<sup>198</sup>

Several years later, in *Action for Children’s Television v. FCC*, 58 F.3d 654, 674-675 (D.C. Cir. 1995) (“*ACT*”), Chief Judge Edwards echoed the same disagreement with the theoretical underpinnings of the “scarcity doctrine”:

For years, scholars have argued that the scarcity of the broadcast spectrum is neither an accurate technological description of the spectrum, nor a “unique characteristic” that should make any difference in terms of First Amendment protection. First, *in response to the problem of broadcast interference when multiple broadcasters attempt to transmit on the same frequency, critics point out that this problem does not distinguish broadcasting from print and is easily remedied with a system of administrative licensing or private property rights.*<sup>199</sup>

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<sup>198</sup> *Telecommunications Research & Action Center v. FCC*, 801 F.2d 501, 508 (D.C. Cir. 1986) (“*TRAC*”) (emphasis supplied); *see also Branch v. FCC*, 824 F.2d 37, 49 (D.C. Cir. 1987) (expressing doubt whether the “scarcity rationale is adequate to support differing degrees of first amendment protection for print and electronic media.”).

<sup>199</sup> *ACT*, 58 F.3d at 675 (Edwards, C.J., dissenting) (emphasis supplied). The recent Commission *Media Bureau Research Paper* made the same point:

This conclusion brought together two judges not usually known for their similar thinking.

Not everyone can afford to publish a newspaper or magazine, or to make a feature film, yet these forms of expression enjoy full First Amendment protection. The Supreme Court “has never suggested that the dependence of a communication on the expenditure of money operates itself to . . . reduce the exacting scrutiny required by the First Amendment.”<sup>200</sup> For these reasons, the notion of spectrum shortage cannot, as a matter of economic and analytical principle, justify violating the free speech rights of broadcasters and newspapers through a cross-ownership restriction.

## **2. Congress’ Decision To Limit the Commission’s Role in Awarding New Spectrum Further Eliminates Any Principled Basis for the “Scarcity Doctrine.”**

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Congress itself has eliminated any principled foundation for the “scarcity doctrine” by dramatically curtailing the Commission’s oversight role in awarding licenses for new spectrum. If spectrum scarcity ever was a valid rationale for restricting broadcasters’ First Amendment rights, that rationale was only appropriate when the Commission was engaged in conducting comparative hearings to choose among competing broadcasting applicants. As the Supreme

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There is also, at any given time, a finite amount of land, wood, and many other resources. The U.S. government does not, however, control all the land in the United States and license its use for free to a few persons who promise to use it in approved ways. Guitars are made from trees that grew on government land, but the government does not limit the supply of guitars and license a few for free in each area to persons who promise to play certain kinds of music on them. At times, in American history, paper has been in very short supply, but government has not considered either licensing newspapers or granting rights of access to them. *Thus, the fact that possible spectrum use is finite makes a weak foundation for the Scarcity Rationale and for any regulation of spectrum use beyond allocation and “traffic control.”*

*Media Bureau Research Paper* at 10 (citations omitted) (emphasis supplied).

<sup>200</sup> *Buckley v. Valeo*, 424 U.S. 1, 16 (1976) (*per curiam*).

Court observed in *Red Lion*, “[w]here there are substantially more individuals who want to broadcast than there are frequencies to *allocate*, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write or publish.”<sup>201</sup> More recently, the Supreme Court has cited the “scarcity of available frequencies at its *inception*” as support for “regulation of the broadcast media that are not applicable to other speakers. . . .”<sup>202</sup>

In *NCCB*, the Supreme Court predicated its approval of the 1975 Rule on an inherent need for the Commission to choose among competing applicants for the same channel and the consequent idea that “[g]overnment allocation and regulation of broadcast frequencies are essential.”<sup>203</sup> Because the Commission “was forced to choose among applicants for the same facilities,” the Supreme Court concluded that the Commission was entitled to exercise the power to restrict ownership in ways the agency deemed likely to advance the public interest.<sup>204</sup>

Today, however, the Commission no longer is engaged, in any meaningful sense, in the business of *choosing* among applicants for broadcast construction permits. Pursuant to the Balanced Budget Act of 1997, available spectrum now must be assigned at its inception through competitive bidding or auction procedures, rather than comparative proceedings requiring the Commission to evaluate the qualifications and comparative merits of prospective initial permittees.<sup>205</sup>

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<sup>201</sup> 395 U.S. at 388 (emphasis supplied).

<sup>202</sup> *Reno v. American Civil Liberties Union*, 117 S.Ct. 2329, 2343 (1997) (emphasis added) (citations omitted).

<sup>203</sup> *NCCB*, 436 U.S. at 799.

<sup>204</sup> *Id.* at 802.

<sup>205</sup> In the Balanced Budget Act of 1997, Congress expanded the Commission's competitive bidding authority under Section 309(j) of the Communications Act of 1934, 47 U.S.C. Sec. 309(j), by requiring the use of auctions to select among mutually exclusive applicants for

Now that Congress has adopted a price mechanism as the method for awarding licenses for the use of broadcast spectrum, the Commission has no basis for continued regulation based on spectrum scarcity. Because broadcast television and radio licenses are, for all practical purposes, traded on the open market, there is nothing unique about broadcast spectrum that distinguishes it from other economic goods.<sup>206</sup> As noted above, if spectrum is scarce, it is scarce only in the sense that all economic goods are scarce,<sup>207</sup> and, therefore, cannot provide a legitimate constitutional basis for regulating speech.

### **3. Technological Changes in Media Have Rendered the “Scarcity Doctrine” Obsolete.**

Even if broadcast spectrum were somehow uniquely “scarce” when *NCCB* was decided over 30 years ago, since then there has been an explosion of fundamental technological changes

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commercial broadcast station licenses. *See* Balanced Budget Act of 1997, Pub. L. No. 105-33, 11 Stat. 251 (1997).

<sup>206</sup> Pursuant to 47 U.S.C.A. § 310(d) (2001), the Commission still reviews the basic licensee qualifications of proposed owners of broadcast facilities before allowing the consummation of license transfers and assignments, but this review, designed to ensure compliance with other broadcast policies such as the prohibition on alien ownership and on acquisition by individuals with records of certain adjudicated civil or criminal violations, does not arise from concerns over spectrum scarcity. This section explicitly forbids the FCC from considering whether someone else would be a better licensee of the station in question.

<sup>207</sup> As Judge Bork further observed in 1986:

[A]lmost all resources used in the economic system (and not simply radio and television frequencies) are limited in amount and scarce, in that people would like to use more than exists. Land, labor and capital are all scarce, but this, of itself, does not call for government regulation. It is true that some mechanism has to be employed to decide who, out of the many claimants, should be allowed to use the scarce resources. *But the way this is usually done in the American economic system is to employ the price mechanism, and this allocates resources to users without the need for governmental regulation.*

*TRAC*, 801 F.2d at 508 n.3 (emphasis supplied) *citing* Ronald H. Coase, *The Federal Communications Commission*, 2 J.L. & ECON, 1, 14 (1959).

in the way consumers receive information and programming. These changes render the “scarcity doctrine” obsolete.

*First*, when *NCCB* was decided, there was no Internet, little cable television, no satellite television or radio, no digital television or HD radio, and no consumer broadband or wireless services, with the wealth of content all of these platforms deliver, some on a wholly unregulated basis. Today, consumers have access to all these sources of news and information. A citizen in an average American city in 1975 had access to three television stations, a handful or so of commercial radio stations, and a couple of daily newspapers. Today, the average American has access to literally thousands and thousands of channels of information through the Internet alone:

More new content is available on the Internet, of course – billions of web pages, both portals such as the Drudge Report, the personal web pages of millions of individuals, small organizations, and bloggers . . . . The latter have a potentially transformative potential for the dissemination of not only opinion, but also facts and news in competition with “mainstream media.” Almost all of the millions of persons who operate portals and web pages would have been unable to gain access to the traditional broadcast media, much less grow large on it. The Internet, in contrast, gives them easy entry and access to a far larger audience, namely billions of screens and the people watching them, at a fraction of the cost of earlier media. The Internet also makes available, at any time and any place, including schools and libraries, content such as newspapers, magazines, radio stations and TV programs that were previously available only in small areas, or to small numbers of subscribers, or at certain times. . . .<sup>208</sup>

Similarly, cable television, satellite radio and television, wireless and broadband services, and other technologies, today provide the average American thousands of additional channels of communication.

*Second*, the number of traditional broadcast stations has dramatically increased since 1975. Nationally, the number of full-power traditional television and radio stations has risen

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<sup>208</sup> *Media Bureau Research Paper* at 16-17.

from 7,411 in 1969 when *Red Lion* was decided to 15,273 at the end of 2004.<sup>209</sup> And the Internet, through streaming video and audio, has allowed reception of hundreds to thousands of these stations far outside their traditional signal reach.

*Third*, the broadcast spectrum itself is not characterized by static “scarcity.” To the contrary, technological advances have increased the amount of broadcast spectrum available for use and have allowed more intense and efficient use of that spectrum.<sup>210</sup> As the *Media Bureau Research Paper* noted:

It is also incorrect to imply that because the possible spectrum use is finite at any given moment, there is a fixed maximum usage in the long term. A finite amount of land can accommodate more and more persons as technology makes it possible to build higher buildings. With buses, paved roads, and better engines, more people and goods can be moved along the same road. Throughout the history of radio, new techniques and technologies have enabled more and more communications to occur via spectrum use. *Recently announced techniques and technologies of this type include secondary markets, “overlay” and underlay” rights, easements, “commons” models, Ultra Wide Band, Software Defined Radios, Frequency Agile Radios, Digital Television, and Digital Radio. Thus, scarcity is not an inherent barrier to more and more users and communication, but an horizon that continually recedes as inventions advance.*<sup>211</sup>

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<sup>209</sup> *Media Bureau Research Paper* at 13 & n.69. As noted earlier in Section IV.D., similarly large growth has occurred in the number of full-power broadcast stations between 1975 and 2006.

<sup>210</sup> See, e.g., *Syracuse Peace Council*, 2 FCC Rcd at 5052-55; Christopher S. Yoo, *The Rise & Demise of the Technology-Specific Approach to the First Amendment*, 91 Geo. L.J. 245, 279-81 (2003) (“Yoo”) (“[T]echnological progress has steadily expanded the range of the electromagnetic spectrum available for commercial use.”). See also *ACT*, 58 F.3d at 675 (Edwards, C.J., dissenting) (“[T]he nation enjoys a proliferation of broadcast stations, and should the country decide to increase the number of channels, it need only devote more resources toward the development of the electromagnetic spectrum.”).

Indeed, as one commentator has observed, the scarcity of broadcast frequencies at the time of *Red Lion* was a result of a series of regulatory decisions limiting the amount of spectrum allocated to broadcasting, combined with the government’s decision to give away new licenses and renew existing licenses for free. See *Yoo* at 269-80. *Red Lion* in effect accepted the Commission’s then existing broadcast regulations as the “constitutional baseline” for reviewing whether additional regulations violated the First Amendment. *Id.*

<sup>211</sup> *Media Bureau Research Paper* at 11 (emphasis supplied).



This growth in mass communication outlets and advancing technology related to spectrum use have led the numerous distinguished courts noted above, the Commission itself, various Commissioners individually, and the recent *Media Bureau Research Paper* to agree that rejection of the “scarcity doctrine”’s rationale is overdue. As the courts and jurists have noted, technological change has eroded any basis for the “scarcity doctrine.”<sup>212</sup> Indeed, the United States Court of Appeals for the District of Columbia Circuit has clearly stated that if the FCC were faced with a rulemaking petition, the agency would be “arbitrary and capricious if it refused to reconsider [the newspaper/broadcast cross-ownership rule] in light of persuasive evidence that the scarcity rationale is no longer tenable.”<sup>213</sup> Not surprisingly, the academics noted above and many others strongly support the views of that court and other distinguished jurists.<sup>214</sup>

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<sup>212</sup> See, e.g., *Sinclair Broadcasting Group, Inc. v. FCC*, 284 F.3d 148, 172 (D.C. Cir. 2002) (Sentelle dissenting) (criticizing the scarcity principle); *Time Warner Entm’t Co. v. FCC*, 105 F.3d 723, 724 n.2 (D.C. Cir. 1997) (“*Time Warner I*”) (“intense criticism [of *Red Lion* stems partly from] the perception that the ‘scarcity’ rationale never made sense—in either its generic form (the idea that an excess of demand over supply at a price of zero justifies a unique First Amendment regime) or its special form (that broadcast channels are peculiarly rare [and partly from] the growing number of available broadcast channels.”) (opinion dissenting from denial of rehearing *en banc*); *ACT*, 58 F.3d at 675 (Edwards, C.J., dissenting) (“Today, however, the nation enjoys proliferation of broadcast stations, . . . [a]nd with the development of cable, spectrum-based communications media now have an abundance of alternatives, essentially rendering the economic scarcity argument superfluous.”); *TRAC*, 801 F.2d at 508, n.4 (“Broadcast frequencies are much less scarce now than when the scarcity rationale first arose.”).

The Supreme Court itself has rejected attempts to extend the “scarcity doctrine” broadcast regime to the mail, telephony, and the Internet. See *Reno v. ACLU*, 521 U.S. 844, 868 (1997) (Internet); *Sable Communications of California, Inc. v. FCC*, 492 U.S. 115, 124 (1989) (“*Sable Communications*”) (telephony); *Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n*, 475 U.S. 1, 10 n.6 (1986) (plurality opinion) (mail); *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 74 (1983) (mail); *Consol. Edison Co. v. Pub. Service Comm’n*, 447 U.S. 530, 542-43 (1980) (mail).

<sup>213</sup> *Tribune Co. v. FCC*, 133 F.3d 61, 68 (D.C. Cir. 1998).

<sup>214</sup> Laurence H. Winer, *Public Interest Obligations and First Principles*, at 5 (The Media Institute 1998) (“In a digital age offering a plethora of electronic media from broadcast to cable to satellite to microwave to the Internet, the mere mention of ‘scarcity’ seems oddly anachronistic.”); Glen O. Robinson, *The Electronic First Amendment: An Essay for the New Age*, 47 Duke L. J. 899, 904 (1998) (“By the 1980s . . . the emergence of a broadband media,

The Commission itself has resoundingly repudiated the “scarcity doctrine.” In ruling on challenges to the Fairness Doctrine, the Commission specifically responded to the Supreme Court’s invitation in *League of Women Voters* for a “signal” that it was time to reconsider the “scarcity doctrine”:

[I]n response to the question raised by the Supreme Court in *League of Women Voters*, we believe that the standard applied in *Red Lion* should be reconsidered and that the constitutional principles applicable to the printed press should be equally applicable to the electronic press.<sup>215</sup>

As the Commission explained, “the dramatic transformation in the telecommunications marketplace provides a basis for the Court to reconsider its application of diminished First Amendment protection to the electronic media.”<sup>216</sup> In particular, the Commission noted that the number of broadcast television and radio stations had increased dramatically since *Red Lion*, and that “the advent and increased availability of such other technologies as cable and satellite television services have dramatically enhanced . . . access” to “a multiplicity of media outlets.”<sup>217</sup>

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primarily in the form of cable television . . . . was supplanting conventional, single-channel broadcasting - and with it the foundation on which the public interest obligations had been laid. If it ever made sense to predicate regulation on the use of a scarce resource, the radio spectrum, it no longer did.”); Rodney M. Smolla, *Free Air Time For Candidates and the First Amendment*, at 5 (The Media Institute 1998) (“Scarcity no longer exists. There are now many voices and they are all being heard, through broadcast stations, cable channels, satellite television, Internet resources such as the World Wide Web and e-mail, videocassette recorders, compact disks, faxes -- through a booming, buzzing electronic bazaar of wide-open and uninhibited free expression.”); Lillian R. BeVier, *Campaign Finance Reform Proposals: A First Amendment Analysis*, *CATO Policy Analysis*, No. 282 at 1, 13, 14 (Sept. 4, 1997) (“There is no longer a factual foundation for the argument that spectrum scarcity entitles the government, in the public interest, to control the content of broadcast speech.”).

<sup>215</sup> *Syracuse Peace Council*, 2 FCC Rcd at 5053.

<sup>216</sup> *Id.* at 5058.

<sup>217</sup> *Id.* at 5051.

Individual Commissioners have also urged the Commission to abandon the “scarcity doctrine.” Then Commissioners Harold Furchtgott-Roth and Michael Powell observed that “[t]he long and short of it is this: as matters now stand, the Commission has unequivocally repudiated spectrum scarcity as a factual matter.”<sup>218</sup>

The Commission recognized as much in its *July 2003 Decision*, emphasizing that “[t]he average American has a far richer and more varied range of media voices from which to choose today than at any time in history.”<sup>219</sup> Indeed, as noted earlier, the Commission there determined that the 1975 Rule “actually works to inhibit [local news and information] programming,” and prevents the efficiencies and increased quality of programming that results from “combining a newspaper’s local news-gathering resources with a broadcast platform”; thus, “the question confronting media companies today is not whether they will be able to dominate the distribution of news and information in any market, but whether they will be able to be heard at all among the cacophony of voices vying for the attention of Americans.”<sup>220</sup>

Finally, the recent *Media Bureau Research Paper* likewise concludes that the “scarcity doctrine” should be abandoned:

In sum, the decades since The Scarcity Rationale took shape have seen an explosion in the number of distribution networks and channels, both via radio and other media – more traditional broadcasters, cable television, DBS, DARS, Internet, WiFi and WiMax – and in the mass of content that fills them. *By no*

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<sup>218</sup> Joint Statement of Commissioners Furchtgott-Roth & Powell, *Personal Attack & Political Editorial Rules*, 13 FCC Rcd 21,929, 21,940 (1998). In 2003, Chairman Kevin Martin stated, “I believe we should relax this rule, if not repeal it. At a minimum, we should give broadcast stations and newspapers the same opportunity to combine that two television stations now have in the larger markets.” Opening Remarks by Commissioner Kevin J. Martin, FCC Hearing On Media Ownership, Richmond, Virginia (Feb. 27, 2003)

<sup>219</sup> *July 2003 Decision*, 18 FCC Rcd at 13766.

<sup>220</sup> *Id.*

*rational, objective standard can it still be said that, today in the United States, channels for broadcasting are scarce.*<sup>221</sup>

For all of these reasons, any newspaper/broadcast cross-ownership restriction must be subject to heightened constitutional scrutiny. As established below, such a restriction cannot remotely satisfy that scrutiny.

**4. Any Newspaper/Broadcast Cross-Ownership Restriction Cannot Survive Heightened Constitutional Scrutiny.**

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As established above, any newspaper/broadcast cross-ownership restriction must be justified under the same heightened constitutional standards that apply to all other governmental regulation of protected speech. The 1975 Rule cannot survive such scrutiny, whether strict or intermediate.

**a. Strict Scrutiny.** Any newspaper/broadcast cross-ownership restriction singles out newspaper owners for especially onerous restrictions and suppress their broadcast speech in favor of the speech of non-newspaper licensees. As a result, such a restriction must be evaluated under the standard of strict scrutiny.<sup>222</sup> That standard requires the Commission to show that its ownership restrictions are the “*least restrictive means [available of achieving] a compelling [state] interest.*”<sup>223</sup> “[I]t is the rare case in which . . . a law survives strict scrutiny.”<sup>224</sup> As one prominent authority has noted, when this “form of heightened scrutiny

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<sup>221</sup> *Media Bureau Research Paper* at 18 (emphasis supplied).

<sup>222</sup> See *Minneapolis Star*, 460 U.S. at 583 (concluding that a regulation that singles out the press imposes a “heavier burden of justification on the State”); *New York Times v. Sullivan*, 376 U.S. 254 (1964). See also *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) (“[G]overnment may [not] restrict the speech of some elements of our society in order to enhance the relative voice of others.”)

<sup>223</sup> *Sable Communications*, 492 U.S. at 126 (emphasis added).

<sup>224</sup> *Burson v. Freeman*, 504 U.S. 191, 211 (1992).

is applied, the law may properly be regarded as presumptively invalid, and likely to be struck down.”<sup>225</sup>

The Commission’s cross-ownership restrictions clearly cannot withstand challenge under this standard. First, as *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 355 (D.C. Cir. 1998), concluded, “it is impossible to conclude that the government's interest [in diversity of programming], no matter how articulated, is a compelling one.”

Second, a uniform nationwide cross-ownership restriction is obviously not the “least restrictive means” available of achieving the purported compelling state interest.<sup>226</sup> If any rule were to survive such review, it would need to take into account the particularized features of each market in order to determine whether the public interest would be served in any way by cross-ownership regulation, an approach far less restrictive than a blanket nation-wide rule.

**b. Intermediate Scrutiny.**

Even if reviewed under the less rigorous intermediate scrutiny standard (which the Commission has already suggested should apply),<sup>227</sup> a newspaper/broadcast cross-ownership restriction still would not pass constitutional muster. Pursuant to this standard, the Commission

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<sup>225</sup> 1 Rodney A. Smolla & Melville B. Nimmer, *Freedom of Speech* § 4:3 (1999).

<sup>226</sup> *Sable Communications*, 492 U.S. at 126.

<sup>227</sup> See *July 2003 Decision*, 18 FCC Rcd at 13793 (Commission acknowledged that any cross-ownership rule would “limit the speech opportunities not only for broadcasters, but also for other entities that may seek to own and operate broadcast outlets (including those with the fullest First Amendment protection--newspapers),” and therefore concluded that it “should draw the rule as narrowly as possible in order to serve our public interest goals while imposing the least possible burden on the freedom of expression.”). See also *1998 Biennial Regulatory Review, Biennial Review Report*, 15 FCC Rcd 11058, 11121 (2000) (acknowledging that the cross-ownership rule would be sustained against claims that it violates the First Amendment if it satisfies the intermediate scrutiny standard announced in *United States v. O’Brien*, 391 U.S. 367, 377 (1968)).

must show that the rule satisfies three separate requirements. As established below, none of these requirements can be met.

*First*, the Commission must “demonstrate that the recited harms” -- *i.e.*, the harms to diversity posed by common ownership of newspapers and broadcast outlets -- are “real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.”<sup>228</sup> The Commission has never established, as it must, that this standard has been met. To the contrary, the United States Supreme Court has noted that when the Commission adopted the 1975 Rule, it “did not find that existing co-located newspaper-broadcast combinations had not served the public interest, or that such combinations necessarily ‘spea[k] with one voice,’ or are harmful to competition.”<sup>229</sup> Indeed, as noted earlier, the Commission made affirmative empirical findings that, in general, there was significant diversity or “separate operation” between commonly owned broadcast stations and newspapers, and that newspaper-owned affiliates tended to be superior licensees in terms of delivering locally-oriented service.<sup>230</sup> Without concrete evidence that common ownership of newspapers and broadcast facilities reduces diversity, the Commission’s “broad prophylactic rule” is inherently “suspect.”<sup>231</sup>

*Second*, because “[c]onstitutional authority to impose some limit is not authority to impose any limit imaginable,”<sup>232</sup> the Commission must “show a record that validates the

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<sup>228</sup> *Turner I*, 512 U.S. at 664.

<sup>229</sup> *NCCB*, 436 U.S. at 786. The United States Court of Appeals for the District of Columbia Circuit, in first reviewing the rule, had similarly observed that the administrative record “contained little ‘hard’ information” and no evidence of specific anti-competitive acts by cross-owned stations. *Nat’l Citizens Committee for Broad. v. FCC*, 555 F.2d at 956, 959.

<sup>230</sup> *1975 Second Report and Order*, 50 FCC 2d at 1050, 1079, 1089.

<sup>231</sup> *Edenfield v. Fane*, 507 U.S. 761, 777 (1993) (internal quotations omitted).

<sup>232</sup> *Time Warner Entm’t Co., v. FCC*, 240 F.3d 1126, 1129-30 (D.C. Cir. 2001).

regulation” itself and not just the agency’s “abstract statutory authority” to regulate.<sup>233</sup> To date, the Commission has not been presented with any *factual* or empirically-based showing that a newspaper/broadcast cross-ownership restriction would directly advance its goal of increasing diversity in the media marketplace. Indeed, the Commission in the *July 2003 Decision* determined that the 1975 Rule upheld in *NCCB* “actually works to inhibit [local news and information] programming,” and prevents the efficiencies and increased quality of programming that result from “combining a newspaper’s local news-gathering resources with a broadcast platform.”<sup>234</sup> Nor did the Commission there even attempt to show that its ownership rule would make a material impact on media diversity.

*Third*, the Commission must show that any newspaper/broadcast cross-ownership restriction that may be adopted is “narrowly tailored to further a substantial governmental interest.”<sup>235</sup> To satisfy the element of “narrow tailoring,” the agency would have to show that its restriction on common ownership of co-located daily newspapers and broadcast stations “does not burden substantially more speech than necessary to further” its professed interests in increasing diversity.<sup>236</sup>

The Commission did not, however, and plainly will be very hard pressed to, show that any newspaper/broadcast cross-ownership restriction is “narrowly tailored” so as to burden no more speech than is necessary to further its diversity aims. Absent the lack of any record evidence of a non-conjectural harm, narrow tailoring becomes an unobtainable goal, and any

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<sup>233</sup> *Id.* at 1130, 1137.

<sup>234</sup> *July 2003 Decision*, 18 FCC Rcd at 13756.

<sup>235</sup> *League of Women Voters*, 468 U.S. at 380; *Time Warner Entm’t Co., v. FCC*, 240 F.3d 1126 (striking down limits on national cable ownership and carriage of vertically integrated programming); *C&P v. United States*, 42 F.3d 181 (4th Cir. 1984) (striking down cable/telco cross-ownership ban).

cross-ownership restriction would be a blunt instrument at best. A regulation that “burdens substantially more speech than is necessary to further the government’s legitimate interests is not narrowly tailored.”<sup>237</sup>

For all these reasons, any restriction on newspaper/broadcast cross-ownership cannot survive heightened First Amendment scrutiny.

**B. A Newspaper/Broadcast Cross-Ownership Restriction Is No Longer Entitled to Differential Review under the Equal Protection Component of the Fifth Amendment.**

Under settled law, government restrictions that single out the press, or any element thereof (like newspapers), for differential treatment are subject to heightened judicial scrutiny not only under the First Amendment, but under the equal protection component of the Due Process Clause.<sup>238</sup> As demonstrated below, a newspaper/broadcast cross-ownership restriction cannot survive equal protection scrutiny now because newspapers are the *only* non-broadcast medium subject to discriminatory cross-ownership restrictions.

“The Equal Protection clause requires that statutes affecting First Amendment interests be narrowly tailored to their legitimate objectives.”<sup>239</sup> Even when they do not affect the exercise of First Amendment rights, all regulatory classifications that differentiate between similarly-

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<sup>236</sup> *Turner Broad. Sys. v. FCC*, 520 U.S. 180, 189 (1997).

<sup>237</sup> *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989); *United States v. Albertini*, 472 U.S. 675, 689 (1985). Indeed, cross-ownership rules that instituted a “complete ban” on telephone companies’ ownership of cable systems did not pass intermediate scrutiny because they were not narrowly tailored restrictions on the telephone companies’ free speech. *US WEST, Inc. v. United States*, 48 F.3d 1092, 1104-1106 (9th Cir. 1995) (vacated as moot 516 U.S. 1155 (1996)); *Chesapeake & Potomac Tel. Co.*, 42 F.3d at 202.

<sup>238</sup> See, e.g., *Arkansas Writers’ Project, Inc. v. Ragland*, 481 U.S. 221, 228 (1987) (citing cases). Cf. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954) (holding that Due Process Clause of Fifth Amendment includes component analogous to Equal Protection Clause of Fourteenth Amendment).

<sup>239</sup> *Police Dep’t of the City of Chicago v. Mosley*, 408 U.S. 92, 101 (1972) (“*Mosley*”).



situated groups or individuals must be “rationally related to a legitimate state interest.”<sup>240</sup> The Supreme Court has not hesitated to strike down on equal protection grounds ordinances and laws that discriminate between similarly-situated speakers.

For example, in *Carey v. Brown*, 447 U.S. 455 (1980), the Court struck down on equal protection grounds a ban on residential picketing that excepted peaceful picketing outside a home that was also used as a place of employment and was involved in a labor dispute. The Court held that the ban’s distinction between labor picketing and all other peaceful demonstrations was overly broad and not narrowly tailored to the government’s stated purpose of protecting residential privacy because it made no attempt to distinguish among various sorts of non-labor picketing on the basis of the harms they would inflict on the privacy interest. At the same time, the Court deemed the ordinance too under-inclusive to directly advance the government’s privacy objectives because it permitted forms of picketing that were equally likely to intrude on the tranquility of the home.<sup>241</sup>

Thirty years ago, in 1975, when radio, television, and newspapers were the *only* media of mass communication, the Supreme Court rejected an equal protection challenge to the Commission’s newspaper/broadcast cross-ownership ban. The newspaper owners there argued that the ban “unfairly ‘singled out’ newspaper owners for more stringent treatment than other

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<sup>240</sup> *Pennell v. City of San Jose*, 485 U.S. 1, 14 (1988) (internal quotation omitted).

<sup>241</sup> Similarly, in *Mosley*, 408 U.S. at 93-95, the Supreme Court invalidated a statute that prohibited picketing and demonstrations within 150 feet of local schools, but that also exempted “peaceful picketing” related to a labor dispute within the school. The Court found that the classification regarding permissible picketing was a violation of the equal protection guarantee in the absence of an overriding state interest to support a distinction between labor pickets and picketing by other speakers. The Court held that, where statutory classifications affect “expressive conduct within the protection of the First Amendment,” it was inappropriate to review them under traditional rational basis standards. *Id.* at 98-99.

license applicants.”<sup>242</sup> Based on the then current technological and regulatory landscape, however, the *NCCB* Court disagreed, holding that the ban “treat[ed] newspaper owners in essentially the same fashion as other owners of the major media of mass communications.”<sup>243</sup> Because, in *NCCB*’s day, the only other “major media of mass communications” besides newspapers were broadcast television and radio, applying a broadcast ownership ban to the single non-broadcast medium of newspapers did not unfairly single out that medium, since similar prohibitions applied to owners of radio and television stations.

Today, the communications revolution has rendered that holding wholly untenable. Although newspapers are singled out as the only non-broadcast medium subject to a broadcast cross-ownership ban, it is no longer true that newspapers are the only non-broadcast “major medi[um] of mass communications.”<sup>244</sup> The major media outlets of today unquestionably include not only cable television, but also the Internet and multichannel video program distributors like satellite and broadband services -- none of which is subject to the Commission’s continued restrictions on broadcast cross-ownership. As established above, these additional media provide thousands of channels of news and information to the average American.

Moreover, even if *Red Lion* remained the law, the government’s imposition of restrictions on newspapers that are not generally imposed on other non-broadcast media must trigger heightened judicial scrutiny:

[L]aws that single out the press, or certain elements thereof, for special treatment ‘pose a particular danger of abuse by the State,’ and so are always subject to at least some degree of heightened First Amendment scrutiny.<sup>245</sup>

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<sup>242</sup> *NCCB*, 436 U.S. at 801 & n.19.

<sup>243</sup> *Id.* at 801.

<sup>244</sup> *Id.*

<sup>245</sup> *Turner I*, 512 U.S. at 640-41 (quoting *Arkansas Writers’ Project, Inc. v. Ragland*, 481 U.S. at 228. See also *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936).

“[D]ifferential treatment ... suggests that the goal of the regulation is not unrelated to suppression of expression, and such a goal is presumptively unconstitutional.”<sup>246</sup>

Any FCC action that treats newspapers discriminatorily cannot remotely satisfy the required heightened constitutional scrutiny. Newspapers have been the *only* non-broadcast medium subject to discriminatory cross-ownership restrictions. It makes no sense whatsoever that a cable company may buy a broadcast station in areas where a newspaper may not. In fact, the Commission has previously recognized that “the information market relevant to diversity concerns includes not only TV and radio outlets, but cable [and] other video media.”<sup>247</sup> Cable, DBS, other video service providers, and Internet content providers make comparable contributions to diversity and competition for audiences, but owners of these media have been freely able to acquire in-market newspapers.

**C. Any Newspaper/Broadcast Cross-Ownership Restriction Specifically Directed at Promoting Diversity Would Not Be Content Neutral and Would Trigger First Amendment Review.**

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Finally, separate and independent from the two grounds set forth above, any FCC newspaper/broadcast cross-ownership restrictions would be subject to heightened judicial scrutiny for the simple reason that they are content-based. The whole *point* of such restrictions, according to the *July 2003 Decision* and previous decisions, is to enhance “diversity” in broadcasting. Because this objective necessarily relates to the *content* of the relevant speech,

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<sup>246</sup> *Minneapolis Star*, 460 U.S. at 585.

<sup>247</sup> *Amendment of Section 73.3555, Report and Order*, 100 FCC 2d 17, 25 (1984). *See also Review of the Commission’s Regulations Governing Television Broadcasting, Report and Order*, 14 FCC Rcd 12903, 12953 (1999) (concluding that cable systems, broadcast stations, and newspapers are all “important source[s] of news and information on issues of local concern” and compete with each other as news and advertising outlets).

such restrictions are not “justified without reference to the content of the regulated speech,” and are hence content-based.<sup>248</sup>

Under settled law, government restrictions based on the content of speech -- no matter how benign their motivation -- are subject to heightened First Amendment scrutiny.<sup>249</sup> Such scrutiny is particularly appropriate with respect to a newspaper/broadcast cross-ownership restriction because there is no evidence that the content-based rationale of such restriction is even effective in promoting a “diversity” of broadcast voices in the first place.

The *NCCB* Court acknowledged that the premise of the 1975 Rule was to “enhance the possibility of achieving greater diversity of viewpoints.”<sup>250</sup> And while it did offer a passing comment rejecting a content based analysis (“the regulations are not content related”),<sup>251</sup> it did so only *in dicta* in a one-sentence snippet distinguishing authority relating to a different issue.<sup>252</sup> Moreover, in this *dicta*, the *NCCB* Court blurred the line between *content* and *viewpoint* neutrality, which more recent Supreme Court authority has crystallized. While a

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<sup>248</sup> *Ward*, 491 U.S. at 791. *See July 2003 Decision*, 18 FCC Rcd at 13630 (“[R]egulating ownership is an appropriate means to promote viewpoint diversity.”); 13760 (“[W]e continue to believe that diversity of ownership can advance our goal of diversity of viewpoint.”). *See also Turner I*, 512 U.S. at 658 (regulation content-based if “concerned with the communicative impact of the regulated speech”).

<sup>249</sup> *See, e.g., Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 117 (1991); *Arkansas Writers’ Project, Inc. v. Ragland*, 481 U.S. at 228.

<sup>250</sup> *NCCB*, 436 U.S. at 796.

<sup>251</sup> *Id.* at 801.

<sup>252</sup> The *NCCB* Court made this comment while addressing the petitioners’ argument “that the regulations unconstitutionally condition receipt of a broadcast license upon forfeiture of the right to publish a newspaper.” *NCCB*, 436 U.S. at 800. After concluding this argument was ill-founded because “a newspaper owner need not forfeit anything in order to acquire a license for a station located in another community,” the Court distinguished the case law upon which petitioners based this argument as addressing a different point, *i.e.*, “the content of constitutionally protected speech.” *Id.* at 800-801. It was in this context that the Court opined that in *dicta* that the ban was “not content related.” *Id.* at 801.

newspaper/broadcast cross-ownership restriction may not be targeted at the *viewpoint* of speech, that does not mean that such a rule is not targeted at the *content* of speech and would not immunize it from heightened scrutiny.<sup>253</sup>

Thus, the more recent Supreme Court authority cited above, including *Ward*, *Consolidated Edison*, and *Turner I* establish that such a content-based restriction must be subjected to heightened scrutiny. Because any FCC newspaper/broadcast cross-ownership restriction would be content based, it would be subject to heightened scrutiny *regardless* of whether *Red Lion*'s "scarcity doctrine" remains the law of the land. Even under the *Red Lion*

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<sup>253</sup> See, e.g., *Consolidated Edison Co. v. Public Serv. Comm'n of N.Y.*, 447 U.S. 530, 537 (1980) ("The First Amendment's hostility to content-based regulation extends not only to restrictions on particular *viewpoints*, but" also to regulations seeking "to restrict expression because of its message, its ideas, *its subject matter, or its content.*") (emphasis added; internal quotation omitted).

That point is entirely consistent with this Court's decision in *Turner I*. That case involved the constitutionality of the Commission's "must carry" rules. The argument was made there that these rules were content-based because the government was forcing cable operators to transmit broadcast speech. The Court rejected that argument, holding that the rules were justified without reference to the content of the speech, but instead by reference to the structural need to protect the broadcast industry, and hence "to ensure that all Americans, especially those unable to subscribe to cable, have access to free television programming—whatever its content." 512 U.S. at 649, 641-52. *Turner I*'s key point for present purposes is that four Members of the Supreme Court specifically determined that an interest in promoting "diversity" is content based. See *Turner I*, 512 U.S. at 678 (O'Connor, J., joined by Scalia, Thomas, and Ginsburg, JJ., dissenting). "Preferences for diversity of viewpoints," the dissent noted, necessarily "make reference to content." *Id.* at 677. "They may not reflect hostility to particular points of view, or a desire to suppress certain subjects because they are controversial or offensive. They may be quite benignly motivated. But benign motivation, we have consistently held, is not enough to avoid the need for strict scrutiny of content-based justifications." *Id.* See also *id.* at 678 ("The interest in ensuring access to a multiplicity of diverse and antagonistic sources of information, no matter how praiseworthy, is directly tied to the content of what the speakers will likely say.").

A newspaper/broadcast cross-ownership restriction, of any stripe, literally prohibits a newspaper from bringing its journalistic and local market expertise and viewpoint to bear in an entire medium, thereby limiting the public's access to ideas. "Although programming decisions often involve the compilation of the speech of third parties, the decisions nonetheless constitute communicative acts." *Arkansas Educ. Television Com'n v. Forbes*, 523 U.S. 666, 674 (1998).

regime, a content-based restriction is subject to heightened judicial scrutiny.<sup>254</sup> *League of Women Voters* underscores that not *all* broadcast regulation is subject to deferential review and that “[t]he First Amendment’s hostility to content-based regulation” requires the Court to be “particularly wary” in reviewing a content-based regulation of broadcasting.<sup>255</sup>

Limiting the speech of some to enhance the speech of others is fundamentally antithetical to the First Amendment.<sup>256</sup> The First Amendment, after all, “rests on the premise that it is government power, rather than private power, that is the main threat to free expression.”<sup>257</sup>

Accordingly, any newspaper/broadcast cross-ownership restrictions would be content based and, as a result, must be tested subject to strict scrutiny under the First Amendment, requiring the Commission to show that such standards are the “*least restrictive means [available of achieving] a compelling [state] interest.*”<sup>258</sup> As established above, the Commission can not satisfy this standard.

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<sup>254</sup> See *League of Women Voters*, 468 U.S. 364. In *League of Women Voters*, the Supreme Court struck down a statute prohibiting broadcasters from “expressi[ng] editorial opinion[s] on controversial issues of public importance,” in part because “the scope of [the] ban [was] defined solely on the basis of the content of the suppressed speech.” *Id.* at 381 (internal quotation omitted), 383.

<sup>255</sup> *Id.* at 384 (internal quotation omitted).

<sup>256</sup> See, e.g., *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 791 n.30 (1978) (rejecting, as inconsistent with “basic tenets of First Amendment jurisprudence,” the notion that the government “may control the volume of expression by the wealthier, more powerful corporate members of the press in order to enhance the relative voices of smaller and less influential members.”) (internal quotation omitted); *Buckley v. Valeo*, 424 U.S. at 48-49 (emphasizing that the “government may [not] restrict the speech of some elements of our society in order to enhance the relative voice of others”).

<sup>257</sup> *Turner*, 512 U.S. at 685 (dissenting opinion).

<sup>258</sup> *Sable Communications*, 492 U.S. at 126 (emphasis added).

## **VII. Repeal of the 1975 Rule Is Required for All Markets, Regardless of Size.**

Retention of the 1975 Rule cannot be sustained under any factual or legal rationale.

Similarly, retention of a modified newspaper/broadcast cross-ownership rule that is discriminatorily applicable to medium and small markets would be equally indefensible. There are at least seven reasons why across-the-board repeal of the rule is the only sustainable approach.

*First*, any newspaper/broadcast cross-ownership rule discriminating against smaller markets would be legally improper given that *vacatur* of the cable television/television cross-ownership rule has applied in all markets.<sup>259</sup> When it ordered *vacatur* of that rule, the court in *Fox I* did not suggest any need to retain it in smaller markets. Neither did the Commission ever mention such a concept when it sought rehearing of *Fox I*, and the agency has allowed the rule to disappear nationwide. If there is no reason to follow a discriminatory market approach in repealing cross-ownership of broadcast television and cable television, two platforms the FCC does regulate, there is even less reason to do so for combinations of television stations and newspapers, which are otherwise unregulated by the FCC.

*Second*, there is no factual basis for a rule discriminating against smaller markets. In the empirical studies related to programming produced by newspaper-owned television stations, market size had no effect on the conclusions. The Lichter Study measuring non-entertainment programming, which Media General submitted in 2001 and has updated for this docket, found that, in comparing stations in markets with co-ownership and those without, stations in the three smallest Media General convergence markets still aired more non-entertainment programming than stations in the immediately higher-ranked DMAs. Indeed, the programming study that the

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<sup>259</sup> *Fox I*, 280 F.3d 1027, *rehearing denied*, *Fox II*, 293 F.3d 537.

FCC staff itself undertook in 1973 in the proceeding that led to the *1975 Second Report and Order* included television stations from variously sized markets. As it noted, stations in the seven largest markets were specifically excluded from the study, which found that, on average, television stations owned by newspapers offered more news, non-entertainment, and overall local programming than other television stations.<sup>260</sup>

*Third*, small markets have been equally affected by the dramatic growth in the number of “traditional” media outlets and more recent new technological entrants over the last 30 years. Media General’s market-by-market review of the availability of content providers in its six convergence markets shows this profusion to be universal.<sup>261</sup>

*Fourth*, the empirical studies before the FCC that relate specifically to advertising competition show no reason to discriminate against small market stations in repealing the 1975 Rule. Most significantly, the FCC has found broadcast advertising and newspaper advertising represent different product markets. Geographic location is, therefore, rendered meaningless in standard antitrust analysis. Moreover, comprehensive studies of advertising rates prepared by Economists Incorporated in 1998 and updated in 2002 drew on data from large and small markets across the country; market size made no difference in the findings; they found no statistically significant difference between advertising prices of cross-owned newspapers and those of other papers in medium and small markets.<sup>262</sup>

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<sup>260</sup> Appendix C, *1975 Second Report and Order*, 50 FCC 2d at 1095 n.4.

<sup>261</sup> Appendices 9-14.

<sup>262</sup> Economists Incorporated, “Behavioral Analysis of Newspaper-Broadcast Cross-Ownership Rules in Medium and Small Markets,” January 2002, submitted with Reply Comments of Media General, Inc. in MM Docket Nos. 01-235, *et al.* (Feb. 15, 2002); Economists Incorporated, “Structural and Behavioral Analysis of the Newspaper-Broadcast Cross-Ownership Rule,” July 1998, submitted with the Comments of the Newspaper Assoc. of America in MM Docket No. 98-38 (July 21, 1998).



*Fifth*, good journalism is expensive to produce no matter what the market size. Cutbacks in local television newscasts have been particularly pronounced in small and medium size markets. Indeed, cutbacks in network compensation have been particularly deep and hard for affiliates in smaller markets.<sup>263</sup>

*Sixth*, local media -- again, particularly those in small markets -- face increasing competition from national players who, given the development of technologies over the last 30 years, can now easily send, beam, or transmit their content and advertising into every market in the nation. The national players siphon off advertising dollars that may otherwise have gone to the communities receiving their material, and they generally have no local presence or commitment. These national players frequently prosper by creating large numbers of specialized video channels or websites, each of which serves a small dispersed audience in each locale, but collectively aggregate many viewers and users. At the same time, the local newspaper, and increasingly the local broadcast station, each of which is dedicated to covering the local community, are facing growing costs of local news operations and increasingly fragmented audiences. To survive in the new environment of “competition for eyeballs,” local content providers must be allowed to move beyond traditional structural ownership regulations and the confines of traditional media boundaries to reach audiences the way they want to be reached -- with multiple streams of information when, where, and how the audiences demand it.

*Finally*, there is no reason in anything previously put before the Commission nor is there any reason in common sense to deny small market media operators and consumers the same

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<sup>263</sup> Dan Trigohoff, “The News Not Out of Topeka: KTKA-TV Latest to Drop Local News; Lower Comp from ABC Cited Among the Reasons,” *Broadcasting and Cable*, April 22, 2002; Dan Trigohoff, “Station Break,” *Broadcasting and Cable*, Jan. 21, 2002; Steve McClellan, “Small Town, Big Problems: Financial Problems for Small Market Television Stations,” *Broadcasting and Cable*, Aug. 6, 2001.

innovation and benefits that flow from convergence and that are available to their counterparts in larger markets. If anything, the costs and difficulties faced by small market operators make such change even more deserved and compelling. Similarly, consumers in these markets are entitled to access to as much local information as operators in their markets can possibly produce, just as is the case in larger markets. Media General's experience in medium and small markets, as described above and documented today and in the past for the FCC, demonstrates the myriad public interest benefits that can redound to consumers in such markets through convergence. From increased coverage of elections and political events to greater and more in-depth focus on community issues to the highlighting of local weather and sports developments to the conduct of new community-centered events, convergence yields tangible improvements in the public interest.

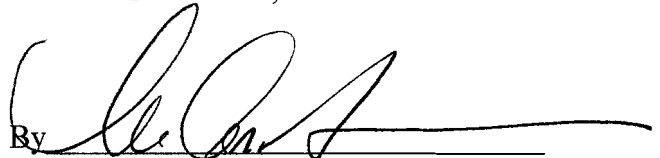
Nothing in the record shows that any action short of total elimination of any vestige of the 1975 Rule would be judicially sustainable or in the public interest. That action is long overdue.

**VIII. Conclusion.**

Media General submits that no legal or factual justifications exist for retaining any form of newspaper/broadcast cross-ownership restriction. Indeed, numerous reasons, as set forth above, compel such full and immediate elimination in all markets, large and small. Accordingly, the Commission should not replace Section 73.3555(d) with any other restriction.

Respectfully submitted,

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October 23, 2006

**Daily Newspapers Owned by Media General, Inc. (2006)**

<b>DMA No.</b>	<b>DMA Name</b>	<b>Daily Newspaper</b>
8	Washington, DC	<i>Culpeper Star-Exponent</i> <i>Manassas Journal Messenger</i> <i>Potomac (Woodbridge) News</i>
12	*Tampa-St. Petersburg, FL	<i>The Tampa Tribune</i> <i>Highlands Today (Sebring)</i> <i>Hernando Today (Brooksville)</i>
27	Charlotte, NC	<i>Hickory Daily Record</i> <i>(Concord &amp; Kannapolis) Independent Tribune</i> <i>Statesville Record &amp; Landmark</i> <i>The (Morgantown) News Herald</i>
35	Greenville-Spartanburg, SC-Asheville-Anderson, NC	<i>The (Marion) McDowell News</i>
47	Greensboro-High Point-Winston Salem, NC	<i>Winston-Salem Journal</i> <i>The (Eden) Daily News</i> <i>The Reidsville Review</i>
60	Richmond-Petersburg, VA	<i>The Richmond Times-Dispatch</i>
68	*Roanoke-Lynchburg, VA	<i>The (Lynchburg) News &amp; Advance</i> <i>Danville Register &amp; Bee</i>
91	*Tri-Cities, TN-VA	<i>Bristol Herald Courier</i>
107	*Myrtle Beach-Florence, SC	<i>(Florence) Morning News</i>
127	*Columbus, GA	<i>Opelika-Auburn News</i>
157	*Panama City, FL	<i>Jackson County Floridan</i>
172	Dothan, AL	<i>Dothan Eagle</i> <i>Enterprise Ledger</i>
181	Harrisonburg, VA	<i>The (Waynesboro) News Virginian</i>
186	Charlottesville, VA	<i>The (Charlottesville) Daily Progress</i>

\* Media General convergence underway

**Television Stations Owned by Media General, Inc. (2006)**

<b>DMA No.</b>	<b>DMA Name</b>	<b>Station</b>	<b>Network</b>	<b>Daily Newspaper</b>
12	*Tampa-St. Petersburg, FL	WFLA-TV	NBC	<i>The Tampa Tribune Highlands Today (Sebring) Hernando Today (Brooksville)</i>
29	Raleigh-Durham (Fayetteville), NC	WNCN(TV)	NBC	
32	Columbus, OH	WCMH-TV	NBC	
35	Greenville-Spartanburg, SC- Asheville-Anderson, NC	WSPA-TV WYCW(TV) WNEG-TV**	CBS UPN CBS	<i>The (Marion) McDowell News</i>
40	Birmingham, AL	WVTM-TV	NBC	
51	Providence-New Bedford, RI	WJAR(TV)	NBC	
52	Jacksonville, FL	WCWJ(TV)	WB	
62	Mobile, AL-Pensacola, FL	WKRQ-TV	CBS	
63	Lexington, KY	WTVQ-TV	ABC	
68	*Roanoke-Lynchburg, VA	WSLS-TV	NBC	<i>The (Lynchburg) News &amp; Advance Danville Register &amp; Bee The Reidsville Review The (Eden) Daily News</i>
89	Jackson, MS	WJTV(TV)	CBS	
91	*Tri-Cities, TN-VA	WJHL-TV	CBS	<i>Bristol Herald Courier</i>
97	Savannah, GA	WSAV-TV	NBC	
101	Charleston, SC	WCBD-TV	NBC	
105	Greenville-New Bern- Washington, NC	WNCT-TV	CBS	
107	*Myrtle Beach-Florence, SC	WBTW(TV)	CBS	<i>(Florence) Morning News</i>
115	Augusta, GA	WJBF-TV	ABC	
127	*Columbus, GA	WRBL(TV)	CBS	<i>Opelika-Auburn News</i>
157	*Panama City, FL	WMBB(TV)	ABC	<i>Jackson County Floridan</i>
167	Hattiesburg-Laurel, MS	WHLT(TV)**	CBS	
176	Alexandria, LA	KALB-TV	NBC	

\* Media General convergence underway

\*\* Satellite Station

**History of Recent FCC Consideration of Newspaper/Broadcast Cross-Ownership**

- *1996 NOI.* In October 1996, the FCC, in a *Notice of Inquiry* sought initial and reply comments on adopting a less restrictive policy for waivers of the newspaper/broadcast cross-ownership rule as it applies to radio stations. Despite a record that strongly favored adoption of a liberalized policy, the FCC never acted on the *Notice*.
- *First NAA Petition.* On April 27, 1997, the National Newspaper Association (“NAA”) filed a “Petition for Rulemaking,” urging the FCC to commence a proceeding to eliminate all restrictions on common ownership of radio and television stations. The FCC did nothing in response to this filing.
- *Second NAA Petition.* On August 23, 1999, NAA submitted an “Emergency Petition for Relief,” urging repeal particularly in light of the FCC’s significant liberalization earlier that month of the television duopoly rule. The FCC did nothing in response to this filing.
- *1998 Biennial Review.* As required by Section 202(h) of the Telecommunications Act of 1996, the FCC in 1998 commenced a biennial review of its media ownership rules. In the course of this docket, which treated the two NAA petitions as comments, the FCC received overwhelming support for repeal or modification of the rule. In the report issued at the conclusion of the proceeding in June 2000, the FCC said it would soon initiate a notice of proposed rulemaking seeking comment on repeal of the newspaper/broadcast cross-ownership rule because the rule might not be necessary to achieve its intended public interest benefits in all instances.
- *2000 Biennial Review.* In the report concluding its 2000 Biennial Review proceeding, which was issued in January 2001, the FCC again said it would be issuing a notice of proposed rulemaking on the newspaper/broadcast cross-ownership rule.
- *2001-2002 Newspaper/Broadcast NPRM.* In September 2001, the FCC finally released a notice of proposed rulemaking, seeking comment on elimination of the newspaper/broadcast cross-ownership rule. In response, the FCC received virtually unanimous industry support for repealing the rule, and numerous economic and programming studies demonstrated such repeal would be in the public interest. Out of the 49 substantive comments, only five opposed repeal. Despite compilation of an extensive record, the FCC, concerned over recent appellate court losses criticizing its approach to rulemaking, chose to defer action for yet another rulemaking.
- *2002 Omnibus NPRM.* In September 2002, the FCC released a notice of proposed rulemaking seeking comment on all its media ownership rules. In the course of the proceeding, the agency released 12 studies it had commissioned. The six studies that bear some tangential relationship to this rule document that its repeal

would enhance the public interest. In both the 2001-02 and 2002 proceedings, consumer and labor groups opposing repeal failed to support their opinions about the need for the rule's retention with any substantive, empirical studies that meet Section 202(h)'s burden for sustaining the rule.

- *2003 Omnibus Report and Order.* In July 2003, the FCC released a report and order on all of its media ownership rules. This report and order repealed the newspaper/broadcast cross-ownership ban, and replaced it with new "cross-media limits" ("CMLs") that retained restrictions on cross-ownership in certain markets. In markets with nine or more broadcast television stations, the FCC lifted the ban entirely. In markets with three or fewer broadcast television stations, the FCC retained an absolute ban. In markets with between four and eight broadcast television stations, the FCC allowed a single entity to hold a newspaper and varying, but still very limited, combinations of broadcast television and radio stations. The FCC adopted this graduated approach based on a "diversity index," which it claimed quantified diversity in markets.
- *2004 Third Circuit Appeal.* Various parties appealed the FCC's 2003 Omnibus Report and Order on numerous grounds. These appeals were consolidated in the Third Circuit Court of Appeals, which promptly stayed the effectiveness of the FCC's new rules. In June 2004, the Third Circuit released an extensive opinion, affirming some of the FCC's rules and remanding others for further consideration and justification. The Opinion did not lift the stay on the effectiveness of any rules. The Court found that the FCC's decision to repeal the newspaper/broadcast cross-ownership ban was justified under Section 202(h) and supported by record evidence. It rejected Constitutional challenges, premised on the First and Fifth Amendments, to the FCC's retention of some type of limits as well as arguments that no limits could be adopted under Section 202(h). The Court found, however, that the FCC did not provide a reasoned analysis for the CMLs that it did adopt. The Court remanded to the FCC, instructing it to modify or justify the CMLs.
- *2005 Denial of Certiorari.* In January 2005, Media General and a handful of other parties filed petitions seeking writs of *certiorari* in the United States Supreme Court. Media General argued that the Court should reconsider its determination in *FCC v. NCCB* and *Red Lion Broadcasting Co. v. FCC* that broadcast spectrum "scarcity" justifies lesser First Amendment protection for broadcast speech and its ruling in *NCCB* that newspaper/broadcast cross-ownership restrictions are subject to only rational basis review under the First and Fifth Amendments. In June 2005, the Supreme Court refused to grant *certiorari*.

**STATEMENT OF ADAM CLAYTON POWELL, III**

I am the Director of the Integrated Media Systems Center, the National Science Foundation's Engineering Research Center for multimedia research, at the University of Southern California's Viterbi School of Engineering. I am also a Senior Fellow at the USC Center on Public Diplomacy and served until last year as a Visiting Professor of Journalism at the University of Southern California's Annenberg School of Communications.

Previously, I served as general manager of WHUT-TV, Washington, D.C., and KMTP-TV, San Francisco, California, the nation's first and second African American-owned public television stations, respectively. I have also served as Director and Vice President for Technology Programs of the Freedom Forum, Executive Producer at Quincy Jones Entertainment, Vice President for News and Information programming at National Public Radio, Manager of network radio and television news for CBS News, and News Director for all-news radio station WINS, New York.

I have authored or contributed to a number of books on broadcasting, journalism, emerging media, and other communications issues. Most recently, I authored a book entitled *Reinventing Local News: Connecting Communities*



*through New Technologies.* I have written pieces on media and communications issues for a number of publications, including *The New York Times*, *Wired*, *Online Journalism Review*, and *Black Issues in Higher Education*. A more detailed biography and complete copy of my C.V. follows this introductory statement.

The following statement provides an overview of the convergence efforts undertaken by Media General, through its subsidiary companies, in six United States television markets where the company owns both television stations and one or more daily newspapers. To prepare this statement, I conducted extensive telephone interviews with representatives from each Media General outlet in each of these six markets. I have also reviewed the filings previously submitted by some of these television stations as part of the FCC license renewal process.

My report on each market follows as Exhibits A through F. Attached to each market report are exhibits providing more detail.

As can be seen from the six reports, it is clear that in each of the six converged markets, the communities served benefit by increased news coverage, expanded public affairs service, and greater community service from the six

licensed television broadcasters than would have been the case absent convergence.

The depth of journalism and public service enabled by convergence is without question documented in these markets, and the geographically broader and editorially more intensive and responsive public service is demonstrated in each of the six markets.

By any definition of localism or community service, these are all examples of outstanding public service that stand as models which could well be emulated by large- and major-market licensees.

It is also interesting to note that these licensees reflect levels of community involvement and (although this is no longer required by the Commission) ascertainment of critical community issues that are superior to those licensees with far greater resources.

Despite the significant benefits that convergence has brought to these markets in terms of quantitative and qualitative improvements in news delivery, it has not, contrary to some critics' fears, resulted in any reduction of news department staffs. Indeed, in implementing its convergence efforts, Media General has increased the news staffs at each of its cross-owned television stations.

The results achieved by Media General have been possible, in my view, because the different media platforms in each market are commonly owned. It is difficult, and at times nearly impossible in my experience, absent common ownership, to create collaborative and integrated working environments that are both durable and effective, particularly when they involve journalists with differing backgrounds, goals, and, at times, interests. Therefore, the only way these results are likely to be replicated is for the Commission to allow and, indeed, encourage common ownership of newspapers and broadcast television stations in markets of all sizes. Further, it is my opinion that competition will encourage the formation of multiple pairs of commonly owned newspapers and television stations in each DMA, each seeking to increase its reach by serving their communities with the same increased news coverage, expanded public affairs service, and greater community service demonstrated repeatedly and conclusively in these markets by Media General.

Communities of all sizes can and should be allowed to receive the benefits of common ownership. What follows is a powerful lesson. And, it teaches that it is the Commission's obligation to enhance localism by eliminating

all restrictions on the common ownership of newspapers and broadcast television stations.

While these trends are evident, a much more rapid trend has become obvious: an explosion of voices in all media. A far more numerous and diverse universe of voices has become available in even the smallest markets. In print, the continuing plunge in the cost of desktop publishing and similar tools has resulted in a profusion of new outlets in print. But even more dramatic, the adoption of the Internet for text, audio and video has far exceeded anything that could have been imagined even 15 years ago. The millions of new voices on the Internet, again even in the smallest markets, means that a diversity of voices is now apparent and is growing only more so at an accelerating pace. Accordingly, concerns regarding a lack of diversity of voices even in the smallest markets are arguably no longer applicable.

### **ADAM CLAYTON POWELL, III**

Adam Clayton Powell III is Director of the Integrated Media Systems Center, the National Science Foundation's Engineering Research Center for multimedia research, at the University of Southern California's Viterbi School of Engineering. He is also a Senior Fellow at the USC Center on Public Diplomacy.

Prior to joining the USC faculty in 2003 as a Visiting Professor at the Annenberg School for Communication, he was General Manager of WHUT-TV, the nation's first African American-owned public television station, adding several hours per week of local prime time news and public affairs programming. He also was the founding General Manager of KMTP-TV in San Francisco, the nation's second African American-owned public television station, which he helped put on the air in 1991.

Before joining WHUT-TV, Powell helped form and then run the Internet and computer media technology programs over a period of fifteen years at the Freedom Forum, as a consultant (1985-1994), then Director (1994-1996) and finally Vice President/Technology and Programs (1996-2001), supervising forums in around the world on information technologies and new media for journalists, media managers, educators, policy makers and researchers.

Powell also served as an Executive Producer at Quincy Jones Entertainment, where he produced Jesse Jackson's weekly television series (1990-1991) and developed nonfiction television projects; Vice President/News and Information programming at National Public Radio (1987-90); a Manager of network radio and television news for CBS News (1976-81), and News Director of all-news WINS (1973-76) in New York, introducing the 22-minute news format. He also was Co-Producer of "Keep the Faith, Baby," a Paramount/Showtime dramatic motion picture biography of his father, Congressman Adam Clayton Powell, Jr., which premiered on 125<sup>th</sup> Street in Harlem and then on television in February, 2002.

Powell has extensive experience in Africa, most recently supervising a team of USC graduate students in South Africa in the summer of 2004. Previously, he conducted Freedom Forum technology training programs in all parts of the continent, from Cairo to Cape Town and from Accra to Nairobi, planned and supervised the 1993-94 National Association of Black Journalists exchange program with South Africa and worked with Nigeria's television authority in the

1980's to upgrade its engineering and journalism broadcasts.

Powell has written for publications including *The New York Times*, *Wired*, *Online Journalism Review* and *Black Issues in Higher Education*. He is the author of *Reinventing Local News: Connecting Communities through New Technologies* (Figueroa Press, 2006) and co-author of *Lethargy '96: How the Media Covered a Listless Campaign* (Freedom Forum, 1996). He has also contributed to several recent books, including *Democracy and New Media* (MIT Press, 2003), *Digital Journalism: Emerging Media and the Changing Horizons of Journalism* (Rowman and Littlefield, 2003) *Encyclopedia of International Media and Communications* (Elsevier Science, 2002), *The Digital Divide: Facing a Crisis or Creating a Myth?* (MIT Press, 2001), *Electronic Democracy: Using the Internet to Influence American Politics* (2nd edition) (Independent Publishers, 2001), *NextMedia Reader: New Technology and the American Newsroom* (American Society of Newspaper Editors, 1999), *The Internet for Broadcasters* (Sypha, 1996), *Radio: the Forgotten Medium* (Transaction, 1995), *Death by Cheeseburger: High School Journalism in the 1990's and Beyond* (Freedom Forum, 1994) and *Demystifying Media Technology* (Mayfield, 1993).

Powell has testified before the Senate Foreign Relations Committee on public diplomacy and new technology. He also helped launch the USC Center on Public Diplomacy and taught its first course, International Broadcasting, in 2004.

Among the awards Powell has won are the 2004 Award for Network TV and Major Market Commentary from the National Association of Black Journalists for his weekly commentaries on WHUT-TV in Washington; the 1999 World Technology Award for Media and Journalism sponsored by *The Economist* magazine; the Overseas Press Club Award for international reporting for a series of broadcasts he produced on Iran; and Associated Press Awards for regional reporting for coverage of New York City. In 2004, Powell was named one of America's "Digital 100" leaders by *Digital Media* magazine.

8/21/06

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## **ADAM CLAYTON POWELL, III**

**2003-Present      University of Southern California**

**2005-Present Director, Integrated Media Systems Center,** the National Science Foundation Engineering Research Center for multimedia, located at the USC Viterbi School of Engineering, supervising multi-million-dollar audio, video and haptic research activity in display and communication technologies. Helped attract several new industry partners in his first year, including Disney, Google, Honeywell, Microsoft and MacNeil-Lehrer Productions. Partnered with USC Annenberg School on advanced research on journalism tools, partnered with Washington, D.C., public schools on deploying K-12 educational technologies and co-sponsored the inaugural Fulbright Research Chair with the USC Center on Public Diplomacy, of which he is still a Senior Fellow.

**2003-2005 Visiting Professor, USC Annenberg School,** and Senior Fellow, USC Center on Public Diplomacy, developing new courses on international broadcasting and related "soft power" topics and testifying at Senate hearings on public diplomacy. Also contributor to USC's Online Journalism Review [[www.ojr.org](http://www.ojr.org)] and coordinator of a year-long research project on the future of local news on radio, television and the Internet, focusing on best practices, enabled by changes in technology that afford increased service to local communities and neighborhoods.

**2002-2004              WHUT-TV (PBS) Washington, D.C.**

**2002-2003 General Manager,** responsible for all operations of WHUT-TV, channel 32 in Washington, D.C., the first African American-owned PBS station, and the campus cable channels. Quadrupled WHUT-TV's local television production, replacing all of Friday and most of Sunday prime time with local news, information and education programs. Quadrupled live international news broadcasts and devoted 8-10 p.m. every Thursday to African programs, many never before seen in the U.S. Created fundraising effort and started external independent auditing.

**2003-2004 Commentator, "Evening Exchange."** Won the 2004 National Association of Black Journalists award for network and major market TV commentary for weekly WHUT broadcasts.

ADAM CLAYTON POWELL, III

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**1985-2001                      Freedom Forum (formerly Gannett Foundation)**

1996-2001:            **Vice President, Technology and Programs** coordinating all technology programs for the Freedom Forum and directly supervising the foundation's media technology conferences and seminars. Created and is executive producer of the foundation's weekly magazine program on NPR Worldwide and of the foundation's daily Internet audio service. Winner of 1999 World Technology Award for Media from the World Technology Network co-sponsored by The Economist magazine. Web site also won *The New York Times* Web site of the day and "Times Pick" award by the *Los Angeles Times* for best Web site.

1994-1996 **Director of Technology Studies and Programs** at the Freedom Forum Media Studies Center at Columbia University, coordinating investigations of new information technologies and organizing forums for researchers, educators and journalists in New York City, Arlington, Oakland, London and Hong Kong.

In 1990 and 1993, served two appointments as Media Studies Center **Fellow**, focusing on two areas: in 1990, unanticipated consequences of technological innovation in newsrooms, and in 1993, the state of media in South Africa, including arranging a forum with Nelson Mandela at the Freedom Forum and coordinating a 1993-94 exchange of U.S. and South African journalists. Also **Visiting Scholar, Columbia University**, 1990-91 and 1992-93.

1985-1994 **Lecturer and Consultant** at the Media Studies Center from the Center's start in 1985, addressing quarterly Technology Seminars for journalists, media managers, researchers and journalism educators on topics including management of newsroom computer systems, fiber optics, and the impact of new technologies on management and ethics. Conducted research on the introduction of videotape as a replacement for film as a primary television news gathering format and contributed articles to publications on numerous topics (see list, below).



**ADAM CLAYTON POWELL, III**

**3**

**1990-1994                    Quincy Jones Entertainment**

1990-1991 Executive Producer, JESSE JACKSON, one-hour weekly television series; 1991-1993: Producer, JOHN BROWN'S RAID, movie for cable TV; 1994: Consultant, Business Development.

Joined Jesse Jackson's program after its fourth episode, completely changing format, structure, set and approach of the program. Traveled to originate from Los Angeles and Harlem's Apollo Theater. Reduced per-episode spending sharply. Designed and executed marketing plan that held 135-station lineup intact. (CNN acquired the program in 1991.) Also 1991-92 consultant helping assess opportunities for new communications ventures, including representing QJE in South Africa.

**1990-1992                    General Manager and Program Director, KMTP  
Television, San Francisco**

Helped launch a new full-power public television station devoted to multicultural programming, the second minority-owned PBS station in the U.S. Responsibilities included assistance with raising funds for construction and first year of operation, managing all phases of construction and startup, and developing all programming.

**1987-1990                    Vice President, News and Information  
National Public Radio**

Strengthened programming, broadened coverage, diversified staff at all levels, and increased audience. Expanded to day-long news coverage with hourly updates, started live call-in programs (now TALK OF THE NATION) and enhanced events coverage. Hired and promoted women and minorities at every level. Initiated NPR's first basing of staff reporters in Asia, Africa and Latin America. Supervised series of reporting projects that won every major award, including the Peabody, Columbia-duPont, Armstrong, Ohio State and Overseas Press Club awards. NPR news audience increased 25%, up from zero growth in 1986-7.

**ADAM CLAYTON POWELL, III**

**4**

**1986-1989            Member, National Communications Advisory  
                         Panel, Office of Technology Assessment**

Advisor to three-year study of communications technology for the U.S. Congress, focusing on legislative and regulatory issues affecting all communications, from high-speed data links to postal service, embracing hardware issues and economic and political concerns.

**1982-1994            President, Powell Communications**

Headed television and radio consulting firm providing media services for clients in the U. S. and overseas, including the Ford Foundation, the Nigerian Television Authority, and the U.S. government, and acquiring radio and television stations in different parts of the U.S.

**1981-1982            Director of News, Satellite News Channels  
                         ABC News/Westinghouse Cable**

Responsible for startup of live twenty-four-hour national all-news cable service.

Shaped format and on-air presentation; helped recruit a diverse staff of 200 journalists and technicians; and supervised news-gathering operations at bureaus and ABC and Westinghouse television stations in over twenty cities. (SNC was subsequently sold to and folded into CNN.)

**1976-1981            Manager and Producer, CBS News, New York**

Joined CBS News as **Manager of network radio operations**, handling daily assignments of over forty network correspondents, reporters, producers, editors and writers. Responsible for screening candidates for radio and television editing and writing positions, significantly increasing representation of women and minorities on network staff. Coordinated affiliate station advisory groups. Management Information Systems liaison for the News Division, managing newsroom computer program. Produced coverage of major breaking stories and Presidential trips overseas. Won the **1979 Overseas Press Club award** for a series of 20 "instant" specials on the Iranian revolution.

ADAM CLAYTON POWELL, III

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**CBS News, continued**

In 1979, promoted to **Manager of Special Events and Political Coverage** for television and radio, covering the 1980 campaign from the Iowa caucuses through the primary elections, the conventions, and fall campaign and election night.

After the 1980 election, appointed **Coordinating Producer** of the CBS MORNING NEWS, then anchored by Charles Kuralt. Duties centered on organizing reporting for the following day's broadcast. Also produced political reports and occasional investigative stories for the broadcast.

**1973-1976                      News Director, Editor; WINS-AM, New York**

Hired as editor for New York's first all-news radio station, promoted to News Director in 1974. Helped inaugurate the twenty-minute format ("You give us twenty-two minutes, we'll give you the world") that is still used by the station decades later. Increased local and regional reporting on a flat and declining budget. While News Director, WINS rose to become the number one station in New York in cume (total listeners, age 12 and higher). Won Associated Press Award for best regional reporting.

**1971-1972                      Assistant News Director, WRVR-FM, New York**

Joined as Interim Program Director to guide transition from non-commercial eclectic format to commercial news-talk. Moved to permanent assignment as Assistant News Director when the format changed; also served as **anchor and executive producer** of morning drive news broadcast.

**1968-1970                      Assistant to the News Director, WCBS-TV**

Responsible for budgeting and long-range planning during expansion of news department at CBS flagship station in New York. Also served as special events producer, working on elections and live events coverage, and as vacation relief field producer of the weekly documentary series EYE ON NEW YORK, which won a New York Emmy Award.

**Memberships:**

(in alphabetical order)

Academy of Political Science

American Academy of Political and Social Science

Information Technology Association of America *Diversity Task Force 2002-2003*

Institute for Interactive Journalism, *Board of Advisors*  
(*predecessor organization: Pew Center for Civic Journalism, Board of Advisors, 1992-2002*)

*International Journal of Communication*, Advisory editor

International Reporting Project, Johns Hopkins University  
School of Advanced International Studies, 2006-

Internet Society, 1995-present, *Presenter: 1997, 1998, 2000, 2002 conventions; Nominating Committee, 1999-2000*

*Journalism Studies* quarterly, Editorial Board

National Association of Black Journalists

National Society of Black Engineers

Pew Internet and American Life Project, Board of Advisors

Public Diplomacy Council, 2003-present; *Board of Directors, 2005-Present*

Society of Professional Journalists

Syracuse University, School of Information Studies, *Board of Visitors*

Telecommunications Policy Research Conference  
*Board of Directors, 2001-present, Secretary 2003-Present*

World Technology Network [<http://www.wtn.net/>], 1999-present; *Chair, Media and Journalism, 2003*

**Selected Publications:**

"Many Voices: Is Anyone Listening" (chapter), *America's Dialogue with the World*. Public Diplomacy Council, scheduled for publication fall, 2006.

*Reinventing Local News: Connecting with Communities using New Technologies*. Figueroa Press, 2006.

"What Is and Isn't Journalism Now?" Rhodes Journalism Review, issue 25, 25 November 2005.

"In U.S. Newsrooms, Still a Monochromatic World," *Black Issues in Higher Education*, July 28, 2005.

"A Recipe for Homegrown News." Online Journalism Review, December 17, 2003.

"Satellites, the Internet and Journalism" (chapter), *Digital Journalism: Emerging Media and the Changing Horizons of Journalism*, Kevin Kawamoto, editor; Rowman and Littlefield, 2003.

"New York Times Reporter Has Seen It All Before, and He's Still Pessimistic." Online Journalism Review, October 15, 2003.

"All Arnold All the Time: Coverage of the California Recall Campaign." Online Journalism Review, September 18, 2003.

"Democracy and New Media in Developing Nations: Opportunities and Challenges" (chapter), *Democracy and New Media*, Henry Jenkins, editor; MIT Press, 2003.

"Local News: What's Old Is New Again." *Feedback: the Journal of the Broadcast Education Association*. Spring, 2003.

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**Selected Publications** (continued)

"New Media" (co-author), *Encyclopedia of International Media and Communications*, Elsevier Science, 2003.

*The Digital Divide: Facing a Crisis or Creating a Myth?* (contributor), Benjamin Compaine, editor; MIT Press, 2001.

"How New Media and Online Journalism Are Changing Diplomacy." *IMP: Magazine on Information Impacts* [www.cisp.org/imp/], July 2001 special Issue, "Diplomacy in the Information Age."

"Technicolor: Is the Digital Divide Growing?" *Industry Standard* magazine, San Francisco, June 4, 2001.

Introduction, *Electronic Democracy: Using the Internet to Influence American Politics* (2nd edition), Graeme Browning, Independent Publishers, 2001.

"Digital Technology and Journalism Ethics in the Pacific" (co-author). *Media Ethics Quarterly*, Emerson College, Boston, spring 2001, volume 12, number 3.

"Children, the Internet and Free Speech." *Media Studies Journal*, Freedom Forum, New York City, Winter, 2000-2001.

"Net Sustenance." *Industry Standard* magazine, San Francisco, November 13, 2000.

Contributing writer, *Crusaders, Scoundrels, Journalists*. Random House, 1999.

"Falling for the Gap," *Reason* magazine, Los Angeles, November, 1999.

*The First 100 Feet: Options for Internet and Broadband Access* (Steering Committee, co-convener), Harvard Information Infrastructure Project, Cambridge, 1999.

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**Selected Publications** (continued)

"Is Your Site Accessible: Wheelchair Ramps for the Information Superhighway," *Reason* magazine, Los Angeles, July 1999.

*NextMedia Reader: New Technology and the American Newsroom*, contributor, American Society of Newspaper Editors, April, 1999.

"Books that Predict the Future -- and Books that Don't," *Reason* magazine, Los Angeles, December, 1998.

"Intelligent Agents and Online Freedoms." *Media Ethics Quarterly*, Emerson College, Boston, winter 1998, volume 10, number 2.

"TV Worth Selling." *Reason* magazine, Los Angeles, November, 1998.

"Satellite Imagery and the Ethics of a New Technology." *Media Ethics Update*, Emerson College, Boston, fall 1998, volume 10, number 1.

"Wiring the Gaps." *Reason* magazine, Los Angeles, July, 1998.

"Digital Dissident." *Wired* magazine, San Francisco, April, 1998.

"The Broadcast Giveaway: When 'the Public Interest' Means Free Ads for Politicians." *Reason* magazine, Los Angeles, April, 1998.

"Hats off to Unofficial Journalism." *Reason* magazine, Los Angeles, February 1998.

(continued)

**Selected Publications** (continued)

"Singapore Model Controls Political Content." *Netpulse* magazine (www.onlinepolitics.com/news), July 17, 1997.

"The 'Daily Me' Is not the End of Democracy." *Baltimore Sun*, May 17, 1997.

"Hong Kong Blues: the Media Forecast Is Dark and Gloomy." *Reason* magazine, Los Angeles, June 1997.

*Lethargy '96: How the Media Covered a Listless Campaign* (co-author with John Mashek and Lawrence McGill); Freedom Forum; Arlington, Virginia; 1997.

"New Media Technology and the Death of Ethics." *Media Ethics Update*, Emerson College, Boston, fall 1996, volume 8, number 1.

"Technology Books." *Reason* magazine, Los Angeles, December 1996.

*The Internet for Broadcasters* (contributor), Yasmin Hashmi, editor; Sypha; London; 1996.

"The Newsroom of the Future." RTNDA *Communicator*, Radio-Television News Directors Association, Washington, October 1996.

"The Economics of the New Television." Technology paper, Freedom Forum Media Studies Center, New York City, March 1996.

"Diversity in Cyberspace." Plenary speech at Association of Education in Journalism and Mass Communication, August 1995, published by the Freedom Forum, January 1996.

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**Selected Publications** (continued)

*Radio: the Forgotten Medium* (contributor), Everette E. Dennis and Craig L. LaMay, editors, Transaction Publishers, New Brunswick NJ, 1995.

"Fertile Attraction." *Reason* magazine, Los Angeles, July 1995.

"On-Ramps to the Information Superhighway: Race and the New Information Technologies." *Media Studies Journal*, Columbia University, New York City, Summer, 1994.

"Managing the Global Information Grid." Technology Paper, Freedom Forum Media Studies Center, Columbia University, New York City, July, 1994.

"They Beat 'Em, We'll Buy 'Em: a Modest Proposal." *New York Newsday* op-ed page, June 24, 1994.

"Letter from South Africa: Johannesburg Spring." *American Journalism Review*, College Park, Maryland, June, 1994.

"State-owned TV: A political tool in South Africa." *Chicago Tribune*, February 25, 1994.

"The Hope and the Hardware of Tomorrow's News" (chapter 9), *Death by Cheeseburger: High School Journalism in the 1990's and Beyond*. Judy Hines, editor. Freedom Forum, 1994.

"Remote Control: In South Africa, the Revolution Will Be Televised - by the Government." *Reason* magazine, Los Angeles, March 1994.

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**Selected Publications** (continued)

"Maintaining Editorial Control in the New Digital Newsroom." Technology Paper, Freedom Forum Media Studies Center, Columbia University, New York City, October, 1993.

"South Africa's Big Show." *Columbia Journalism Review*, New York City, September/October, 1993.

"The Pictures Are Better on Radio." *The New York Times* op-ed page, June 22, 1993.

"You Are What You Hear: The Mission of Radio." *Media Studies Journal*, Columbia University, New York City, June, 1993.

*Demystifying Media Technology* (contributor). Everette E. Dennis and John Pavlik, editors; Mayfield Publishing; Mountain View, California; 1993.

"New Wave Television: Competing in a 200-Channel Universe." Technology Paper, Freedom Forum Media Studies Center, Columbia University, New York City, December, 1992.

"From Box Office to Front Office: African Americans and Media Ownership." *New York Newsday*, November 9, 1992.

"The Global TV News Hour: The New Video News-Gathering Alliances." *Gannett Center Journal*, Gannett Center for Media Studies, Columbia University, New York City, Winter 1991-92.

"Fiber Optics: Unanticipated Consequences of a Transparent Technology." Technology Paper, Freedom Forum Media Studies Center, Columbia University, New York City, 1989.

"Getting the Picture: Trends in Television News Reporting." Technology Paper, Freedom Forum Media Studies Center, Columbia University, New York City, 1988.

**ADAM CLAYTON POWELL, III**  
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**Personal:**

Married; two sons, ages 36 and 34  
Excellent health

**Language skills:**

Reasonable fluency in French (lived in Paris for two years)

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8/21/06

## **Convergence in US Journalism Schools**

**By Sree Sreenivasan**

**October 2006**

### **INTRODUCTION**

As a professor at the Columbia Graduate School of Journalism in New York City since 1993 (and Dean of Students since 2005), I have had a front-row seat in one of the most dramatic eras in journalism education. All manner of changes have swept through academia - technological, fiscal and philosophical - as journalism schools try to keep up with all that's going on in the media and society at large.

My CV is attached, but here are some highlights.

- I have been teaching various journalism formats since 1993 - TV, radio, print, adding online in 1995.
- In 1995, after working for a company that trained print, radio and photography journalists to shoot and edit video, I introduced a successful course called "TV for Print Majors," which trained hundreds of print students to do full-fledged television.
- I have written extensively about new media in publications such as The New York Times, Business Week and Popular Science.
- I write a regular column read by more than 10,000 media professionals for Poynter.org, a Florida-based media think tank.
- I regularly give lectures and present papers at industry conferences. I have taught workshops explaining technology's impact on the media across the country and in eight other nations.
- I also serve as a visiting faculty member at The Poynter Institute and the American Press Institute.
- When the API created a national taskforce to examine the crisis in the newspaper industry and how media companies might react, I was the only journalism academic on the project.

Using my regular interactions with journalism colleagues at various schools, as well as research conducted for this paper, I can comment on how and why convergence is practiced in journalism schools. Fundamentally, I believe consumers today demand, and increasingly expect, better, more engaging reporting and story-telling across multiple platforms. To survive, we see traditional media companies, which are facing competition from a diverse group of new entrants, completely revamping their approaches to news. Government regulations that stymie these new approaches to journalism do a disservice to consumers and the public interest.

### **An Industry in Constant Turmoil**

American journalism, it seems, is always in turmoil. As far back as the late 1800s, there were complaints about the "decay" of journalism and legislatures sought ways to control an out-of-control press (including a law introduced in Congress to require newspapers to reveal the names of writers of unsigned editorials; it failed). At other

times, it was presumed that the new technologies would mean the end of existing formats - radio would kill newspapers; TV would kill radio; and the Internet would kill everything. Today's concerns about the changing media landscape echo similar concerns that arise every couple of decades. This constant worry about "the future" (whether one year, five years or 10 years hence) has helped shape how most media institutions in this country operate.

Reacting to changing market forces, the industry is moving ahead and coming up with innovative ways that engage audiences, attempt to stay ahead of eroding marketshare, serve the public good and, yes, make money.

## **Journalistic Silos No Longer the Case**

One of the conventions and operating models through much of the past century has been to make journalists work in silos. Newspaper journalists here, radio journalists there, TV journalists in that other silo. Journalists were identified and paid by companies who separated them into these formats. Personality quirks and stereotypes entered popular culture: the hard-charging print investigative reporter; the perfectly coiffed TV anchor; the guy with "a face for radio." That's the way the industry worked and that's the way journalism schools churned out their graduates.

But nowadays, that makes little sense. As the media industry changes and diverse competitors enter the picture, it requires a new generation of journalists who don't see themselves as fitting into silos. They must be journalists first, working in a format-neutral environment, using different techniques for different kinds of stories. They can't wear blinders based on the delivery system of the news; they must just deliver the news. Thinking of these journalists as, say, just newspaper reporters or TV reporters doesn't quite work, because the marketplace demands that they work in multiple fields in real time, taking advantage of the convergence of technologies, formats and skills.

In fields like medicine, most innovation comes from the best schools in those fields. New techniques, methodologies come from medical schools, for example, and not usually from working doctors. In journalism, however, innovation comes from the industry itself, because journalism schools are imitative, rather than innovative. The push for convergence in the industry has meant that students see a direct benefit to learning those skills: getting a job. In turn, the students have demanded more convergence courses. Another push has come from the career services/placement officers, who know their cross-trained students are more employable.

Viewed another way, these changes represent a market demand on journalism schools. While it is at times hard to get journalism professors to break out of their own silos, at least we have not been hampered by government regulations as we attempt to do so.

## **The Changing Media Landscape**

The media landscape has been changing in ways that would never have been thought possible. New video, audio and other kinds of content platforms are offering new

diverse sources of competition and changing the ways that audiences get their news, information and entertainment. There has been a lot written about *what* audiences are offered - from the 500-channel TV universe to the unlimited web world. But the changes in *how* and *when* news content is delivered have been especially dramatic. Technologies ranging from cellphones to personal digital assistants to satellite radio are being used to get content directly to consumers. At the same time, consumers have been slowly freed from "consumption by appointment" (the need to, say, watch a certain newscast only at a certain time). Devices like Tivo and other digital video recorders are encouraging the growth of video-on-demand and letting viewers control their viewing schedules. While it may have been easier because of their size for the big networks to respond to this and work with the providers of these devices or offer parallel simulcasts of their own programming, their affiliates of all sizes also understand the critical importance of these changes, and they also are adapting to them.

In the fall 2006 television schedule, consumers are seeing various examples of these new approaches: CBS is offering web simulcasting of its revamped nightly newscast, along with free video-on-demand of many of its other shows; ABC is streaming its primetime shows and offering free downloads of important episodes; NBC is streaming its primetime shows - all of which affects local stations around the country. CBS shows the extreme to which all this can be taken in television through its promotional copy:

Watch The CBS Evening News with Katie Couric - See it now. Anytime Anywhere - live simulcast, or watch it on-demand any time. There are two ways to watch on demand, the full broadcast or build your own. Search and watch the news you choose from our video archive of more than 30,000 CBS News video clips.

All of this means that, in many ways, the power equation has changed from the producers to the consumers of content. With so many choices available to them, consumers will prefer news and content producers that are nimble enough to cater to their changing viewing and listening and reading habits.

## **Columbia's Experience**

Columbia University taught its first new media journalism course in the fall of 1994, and was one of the first such programs in the world. The idea came from a working journalist and alum who encouraged the school to recognize the importance of what was then the emerging World Wide Web. In those early years, teaching this subject was relatively easy. It was so new that almost no one knew anything about it and the faculty was inventing it as it went along, slowly setting standards and creating conventions for storytelling online. In those early days, the web was almost all text on an endless series of gray backgrounds. A few photos and certainly no video, no audio, no graphics, no Flash animations.

Skip ahead a decade and you have 12-year-olds editing skateboarding videos, and students entering colleges and graduate schools who have grown up with all the new technology so ingrained in their minds that it is not even new to them anymore. Working seamlessly with audio, video, and photographs, they deploy each of these types of media into their stories as they feel appropriate. They understand that

reaching as many consumers as possible in a market with engaging content is necessary to ensure their employer's – and, so, their own – future success.

## **Graduates Seeking Platform-neutral Work**

When students graduate from schools where such convergence is taught, they are ready and eager to work in different kinds of media outlets and prefer to work in places that reward and encourage them to think outside the silos. They might do a newspaper-type story, then appear in a video interview, narrate audio for some photographs. Their training and their skill set allows for all this - actually demands this. Going into the traditional silo-type newsrooms that remain results in their feeling overqualified and under-inspired.

## **The Industry and Students**

While some parts of the industry have been slow to recognize all of this and continue to work in silos, the most-forward-thinking companies (and a growing majority) are increasingly adapting and changing their working methods. It's not easy to do, as many older managers generally have to be trained in convergence and have to change years and decades of work styles and patterns. Getting employees to think, and operate, beyond the old stereotypes is hard work. It requires a real commitment and real resources. But companies that have not radically changed their approaches to reporting and their environments are being left out and left behind.

Students are seeking out companies with built-in entrepreneurial spirits - and lack of government handcuffs - to give them opportunities to use their training to tell their stories in more compelling ways and to serve audiences and consumers better. Some of these more attractive companies are sometimes not even traditional media outlets whose core missions aren't usually the same as the traditional media companies.

By losing out on the opportunity to compete head-to-head with the upstarts, some traditional media companies - those that continue to operate in silos - are in real danger of being bypassed altogether. The companies that offer their employees a variety of storytelling and story execution methods are going to have the greatest chance of success and so are being sought out by the best and brightest students and journalists and will find the largest audiences among consumers.

What students would like to do is work at one of the innovative companies, but practice traditional journalism values. The FCC should recognize that restrictions on cross-ownership make that much harder to do.

## **Graduates being asked to do multiple kinds of journalism**

As a journalism professor, specializing in new media, I am generally familiar with similar programs at schools around the country. To confirm and build on my knowledge, this fall I researched and interviewed colleagues at numerous journalism schools around the country. The schools on which I focused included Northwestern University, the University of California at Berkeley, the University of Florida, the University of Southern California, Emerson College (in Boston), the City University of

New York, the University of Maryland, New York University, and San Francisco State University. My colleagues at other institutions confirmed that students are finding, as they head into the business, that the media industry demands that they perform tasks and display skills they may not have had to before. For example, Columbia grads who didn't take advantage of our new media classes are finding that they have to take classes as alumni at Columbia or local schools to retool themselves. Certain University of California at Berkeley alumni are being recruited by websites because they are able to do more than one kind of journalism, especially video and audio. Broadcast graduates of Emerson College are being hired by medium-sized newspapers to be print reporters who can occasionally do video or audio for the newspapers' websites. Newspaper editors are also hiring students with experience in Flash animation. At the University of Florida, Gainesville, students who join as print students are finding that when they do internships the demand for new media knowledge is very strong and they come back after summer work, demanding more opportunities to be in converged classes. There's a direct impact in their attractiveness to employers. At the University of Southern California, online is the fastest-growing segment of journalism. USC graduates who go into newsrooms as print reporters now find that they carry video cameras routinely and are expected to come back to the newsroom and first turn out a video story for the Web site. Their broadcast training and online video training, especially how to handle a camera, edit the video and write a script, is invaluable.

### **Markets of All Sizes Are Getting In the Game**

My research shows that markets of all sizes are taking convergence steps. Print and television reporters around the country are being asked to try new ways of storytelling, something they have to be taught on the job. Here is an example of a note I received from a graduate at a small newspaper:

Dear Sree, I'm from the class of '04 & I made a huge mistake by not taking new media classes at Columbia. How can I make up for it? I am a features reporter for a McClatchy paper & I think I can convince my editors to send me to training, or at least spend some of my working hours learning on-the-go.

Note that the student is a recent graduate, not from, say the 1980s or 1970s, though we hear similar stories from our older alumni, of course. We teach multiple short courses a year for alumni who wish to retool, along with workshops in different cities.

### **Nature of Faculty Hires is Changing**

Traditionally, professors have been hired for their ability to do one kind of journalism. But administrators all over the country say that being able to teach multiple kinds of journalism (say, print and web or radio and TV) gives potential professors a real advantage over the competition. At City University of New York, several of the recent hires are involved in converged journalism. CUNY has hired several faculty members already involved in converged journalism. The important development at that school is that the professors hired to teach print and broadcast appear to have accepted the notion of converged journalism and have embraced incorporating new media into their courses as well. At Northwestern University's Medill School of Journalism, the faculty has sought out journalists who have serious web experience, while other schools



continue to post job listings for web journalists. At the University of Maryland, several faculty have been asked to learn more about new media. Columbia has a graduate student with extensive broadcast experience in Canada who has come to Columbia expressly to learn web skills so she can be a professor.

## **Conclusion**

My view about all this is simple. Convergence is no longer just "the future." It has been around for years, is real and is here to stay. The industry has embraced it in a very serious way. Journalism students are being taught convergence, not because of some vague notion of how it might be useful one day, but because they absolutely need it to succeed. Traditional media companies that are able to take advantage of the skill sets and how the business is changing will be the ones that last over time. Because sources of content and diversity are very abundant, preventing media companies from owning multiple platforms and telling their stories on them shows that government regulation has not yet caught up with the real world -- restricting rather than embracing new technological changes in media. Continued restriction based on a "diversity" rationale fails to account for the state of journalism today, and it means that local news operations, especially, are being hamstrung in the delivery of news and information the way the public wants it. That is not good for the media industry, and it is not good for the nation.



Summer 2006 / [See narrative version](#)

## SREENATH SREENIVASAN

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- Columbia University new media professor  
Dean of Students, Graduate School of Journalism
- WABC-TV's "[Tech Guru](#)" (Thursday mornings at 6:20 and Saturday mornings at 7:45)
- Co-founder, [South Asian Journalists Association](#)
- TIPS: [SreeTips.com](#)  
BLOG: [New To Sree](#)

## Teaching

July 1993-present

**Columbia University Graduate School of Journalism**, New York

Dean of Students (July 2005 to present)

In charge of student affairs - working closely with 380+ students, faculty and other deans.

Director, Part-time Program - serving as principal adviser to 90+ students.

Continuing to teach courses.

Associate Professor of Professional Practice (formerly asst. prof. & lecturer)

Run the new media department (coordinate new media classes/curriculum)

Former director, Part-time Program, 1997-2001 (program grew from 32 students to 101)

Founding administrator, [Online Journalism Awards](#), 2000-2002 (world's largest new media contest)

Courses: Spring 2006 -- Covering the Religions of India; Master's Project; Fall 2005 -- [New Media Issues](#);

Spring 2005 -- [New Media Workshop](#) (advanced multimedia reporting & production);

- Previous semesters--Advanced Reporting & Writing; TV for Print Semesters; Enterprise Reporting; Nightly News Workshop; Master's Project; Tools of the Modern Journalist; Newsmagazine Workshop for Columbia's School of International & Public Affairs
- Served as Faculty Adviser to campus chapter of Society of Professional Journalists, 1994-2005 (won national adviser of year among 200 chapters, 1998)
- Helped set up coordinating committee of Deans of Students across campus; served on task force for Southern Asian Institute

May 1998-present

Various newsrooms and organizations in the U.S. & abroad

Teach "[Smarter Surfing: Better Use of Your Web Time](#)" workshops for journalists and other professionals

More than 15,000 professionals have attended in eight countries.

Teach "[Figuring Out Blogs, Wikis and Whatever's Next](#)" workshops for journalists and other professionals

Several other new media and technology workshops

November 2000-present

**Poynter Institute**, St. Petersburg, Florida

Visiting Professor of New Media

[Web Tips columnist for Poynter.org](http://www.poynter.org) (e-mailed to 10,000+ media professionals each week; more than 150 columns since Aug. 2001)

Taught classes for:

College Reporting & Writing Fellowship (July 2003)

Beat Reporting (March 2003)

College Reporting & Writing Fellowship (June 2002)

Writing Online News (Nov. 2001)

Anchors as Newsroom Leaders (Aug 2001)

Producing Newscasts (Aug 2001)

College Reporting & Writing Fellowship (June 2001)

Power Reporting (April 2001)

Newspaper Writing and Editing (Feb. 2001)

Writing Online News (Nov. 2000)

April 2001-present

**American Press Institute**, Reston, Virginia

Visiting Faculty

Taught classes for:

Opinion editors (March 2005)

Weekly and Community Newspapers seminar (Jan 2003)

News Editors & Copy Chiefs seminar (July 2002)

Journalism Educators seminar (June 2002)

Editorial Page Editors seminar (May 2002)

Lifestyle Editors seminar (May 2002)

Weekly and Community Newspapers seminar (Jan 2002)

Journalism Educators seminar (June 2001)

Sports Editors seminar (April 2001)

September 2000

**Emerson College**, Boston

Visiting Faculty, Dept. of Journalism

Taught faculty training workshops in new media

July 2000 & July 2001

**Center for Independent Journalism**, Prague, Budapest & Bratislava

Visiting Faculty

Taught classes in new media trends for journalists and trainers. [See workshop info](#)

April-Sept 1995

**NYT-Video News International**, Philadelphia

Trainer

Taught international print and radio journalists to report, shoot & produce television stories

April 1994 & 1995

**Videomaker Magazine Expo**

Trainer-lecturer

Ran workshops in broadcast writing and reporting

## Journalism

Dec. 2000-present

**[WABC-7 & 7online.com](#)**

More than five years of on-air reporting

"TechGuru" on "Eyewitness News This Morning"

6:20 a.m. every Thursday -- technology reports

7:45 a.m. every Saturday -- "Sree's Top Three"

Hosted and co-produced half-hour documentary on technology, "Computers 101" - April 2002

([web versions](#) | [video samples](#))

May 1996-2002

**The New York Times**

Freelance writer, business and arts sections

Wrote more than 40 articles and reviews for Business, Arts and Circuits sections and occasional "Taking in the Sites" columns ([samples](#))

Aug 2001-present

**[Poynter.org](#)**

Weekly Web Tips column -- useful Web sites for journalists and others who deal with the media ([samples](#))

April 2004-present

**[Popular Science](#)**

Member of "Geek Chorus" - writing occasional articles and answering questions from readers

June 1999-present

**Asian America on PBS**

Freelance guest host/moderator

Serve as occasional television host of news show airing nationwide on public television; averaging 10 shows a year ([samples](#))

Nov. 2004-July 2005

**American Desi on DISH Network**

Freelance guest host/moderator

Serves as occasional television host of news talk shows aimed at South Asians in the U.S. ([samples](#))

May 2000-2003

**[Online Journalism Awards](#)**

Founding administrator of largest international Web journalism prize contest; run by Columbia and Online News Association. Led small team that conceived, built and executed contest.

January 2000-Feb 2001

**[Inequality.org](#)**

Freelance managing editor of news site covering the divide in income, wealth and health

Assigned and edited stories and ran Web site for this small nonprofit.

May-Sept 1997

**The New York Times Electronic Media Company**

Consultant

Developed editorial content and supervised small research and reporting staff for [New York Today](#), a new site for The New York Times on the Web

Jan. 1995-May 1996

**The Nightly Business Report on PBS, New York**

Freelance producer

Produced field packages; reported off-camera for television show

August 1992-May 1998

**Business Today**

New York correspondent

Covered Wall Street, management consulting and business schools for leading India-based business magazine (former senior copy editor and writer in New Delhi)

1987-1994

Various freelance and staff positions in Fiji, India and New York, including:

Staff: The Sunday Observer & New Generation (New Delhi - 1991-92), Business Today (New Delhi - 1992)

Freelance contracts: The World This Week/NDTV (New York York correspondent, 1994-1997) and The Economic Times (New York, 1992-94); Fiji Sun (Suva, 1986).

**Published In**

The New York Times, BusinessWeek, Popular Science, Time Digital/On Magazine, Business Today, Rolling Stone, Columbia Journalism Review, The Earth Times, Bloomberg Business News, Newsday, Forbes.com, The Economic Times, Sesame Street Parents, International Herald Tribune, Miami Herald, Chicago Tribune, Dallas Morning News, Arizona Republic, San Francisco Chronicle, Sunday Observer, Fiji Sun, 7online.com, Beliefnet.com, Poynter.org ([samples](#))

## Long-form Projects

Feb-April 2002

### "Computers 101" on WABC-TV

On-air host, narrator and co-producer for half-hour documentary on technology (aired April 14, 2002)

Sept. 1996-Dec. 1997

### The Encyclopedia of Television News (Oryx Press, 1998)

Contributing writer

Wrote biographical entries on Charles Kuralt, Tom Bettag and Steve Kroft

## Education

### M.S. in Journalism, Columbia University, New York (graduated 1993)

courses included: TV and radio reporting; business reporting

### B.A. (honors) in History, St. Stephen's College, New Delhi (graduated 1991)

## Short-term courses:

Freedom Forum Technology Workshop for Educators, San Francisco

1998 Fellow: Attended week-long training course on technology for journalism professors

Poynter Institute, St. Petersburg, Florida

1995 Fellow, Journalism Educators Workshop

Attended week-long training course in teaching techniques and strategies for journalism professors

## Computers

Windows and Mac publishing software; HTML programming and other Internet skills; nonlinear video and audio editing; project management software

## Affiliations

- [South Asian Journalists Association](#)  
Co-founder, past president & administrator of SAJA Journalism Awards  
Editor, [SAJA Stylebook](#) for Covering South Asia and South Asian America
- [Society of Professional Journalists](#) & The Deadline Club  
Faculty adviser for SPJ Columbia chapter, 1994-2005 (named National Adviser of the Year, 1998)  
Member of National Strategic Planning Committee, 1998-99
- [Asian American Journalists Association](#)  
Elected national board member (2001-2003)  
Member, Media Watch Committee (1998-present)  
Member, High School Outreach Committee (2001-2005)  
Contributor to "[All-American: How to Cover Asian America](#)" - AAJA stylebook (1999-2000)
- [Online News Association](#)  
Founding member, 1998  
Member of awards committee that developed Online Journalism Awards
- [New York Financial Writers' Association](#) (1993-2001)  
Former executive board nominating committee (1999)  
Former student committee chair (1994-95)

## Honors

- Named one of [Newsweek's 20 influential South Asians](#) in the U.S., March 2004
- Honoree at 2005 Asian American celebration in City Hall by Manhattan Borough President Virginia Fields, Feb. 28, 2005
- SASA 2005 [Award for outstanding achievement in journalism](#) at South Asian Students Alliance convention, Los Angeles, Jan. 16, 2005
- Named one of "Top 5 Under 35" by Asian Indian Chamber of Commerce in New Jersey, May 2004
- Named one of India Today magazine's "40 leaders under 40" in the U.S., 2000
- National Faculty Adviser of the Year, Society of Professional Journalists, 1998  
Selected from among 200 journalism schools around the United States
- Creating a Voice Award, Indian American Political Awareness Committee, 1998
- First [Columbia Asian Alumni Heritage Award](#), 2001
- Indian American [Kerala Center Award](#) (for Journalism), Long Island, 2000
- Honoree at New York Police Department event with NYPD Police Commissioner for work in diversity training taskforce, May 2001
- Nominated for World Technology Award presented at World Technology Summit, London, 2001
- Subject of a 30-minute profile on "N-R-Eyes" documentary series about South Asians shown worldwide on Zee News Network, 2000
- Named an ATT India Horizons "Cyber Professor of the Month," 1996
- SPJ Scripps National Leadership Retreat Fellow, Greencastle, Indiana, 1997
- William Wood Fellowship, Columbia University, 1993-94
- Philip Greer Scholarship, New York Financial Writers' Association, 1993
- John Patterson Workshop Prize, Columbia University, 1993

## Keynote Speeches

*Reverse chronological order*

- Commencement speaker, Walt Whitman Middle School, Brooklyn, June 20, 2005
- Keynote speech about technology trends for Thomas Edison High School annual tech competition, June 4, 2005
- Keynote speech for Knowledge Workers Education Alliance (professors, technologist and librarians from around the tri-state area), April 15, 2005  
Topic: "The New Media: Pedagogical Implications"
- Keynote speech about technology trends for NYC Public Schools' "Groundhog Job Shadow Day" at Cisco Academy, April 8, 2005
- Keynote speech on ethnic press, immigrant families and domestic violence for "We Are All Brooklyn" conference, Feb. 25, 2005
- Keynote speech for annual dinner-dance of the Asian American Coalition of Staten Island, March 14, 2003. Topic: "An Asian American Identity."
- Keynote speech for Ethnic Press Conference at LaGuardia Community College hosted by Independent Press Assn and Jewish Community Relations Council, June 2002. Topic: ["In the Shadow of the 7 Train: Lessons from Covering 9/11 and Beyond."](#)
- Keynote speech for Independent Press Association of New York conference at LaGuardia Community College, Queens Nov. 2002 Topic: "The Importance of the Independent and Ethnic Press."
- Keynote for Minnesota Public Radio's Integrated Media Fellowship, April 2002 at MPR HQ in Minneapolis. Topic: "Lessons from the Online Journalism Awards."
- Keynote for Emerging Ethnic Media Conference hosted by Jewish Community Relations Council and Columbia University, Oct. 2001. Topic: "The Ethnic Press After Sept. 11."
- Keynote for luncheon session at 17th Computers & Writing conference, Ball State University, May 2001. Topic: ["Content is Still King - Lessons from the Online Journalism Awards."](#)
- Keynote for an evening Celebrating South Asian Heritage at NY City Hall, Sept. 2000. Topic: ["South Asiana in the U.S."](#)
- Keynote for [Columbia University Asian Alumni Reception](#), April 2001. Topic: "Asian Americans and the Press."
- Keynote for annual dinner of the [Assn of Asian American Engineers of NY & NJ](#), Dec. 2000

- Keynote for [opening of New York Conference of Asian Studies photo exhibition](#). Topic: "An Indian Abroad" College of St. Rose, Albany, Nov. 2000
- Other talks include  
Annual lecture on South Asian media for departing diplomats and military personnel at State Dept's Foreign Service Training Institute, Virginia  
Annual workshop for annual conference of American Society of Journalists & Authors, NYC - 2002, 2003, 2004, 2005

See [list of other talks](#)

## Journalism Evaluation Work

- Administrator/judge of [SAJA Journalism Awards](#), 1997-present
- Judging leader for online category, [National Magazine Awards](#), 2006; judge 2000, 2004, 2005
- Member, [Newspaper Next Task Force](#), American Press Institute, 2005-2006
- Founding Administrator of [Online Journalism Awards](#), 2000-2002
- Judge for online category, Scripps Howard National Journalism Awards, 2005 & 2006
- Judge for Society of Environmental Journalists online awards, 2006
- Judge for \$20,000 international investigative reporting prize administered by [International Consortium of Investigative Journalists](#), Washington, 2001, 2003, 2004
- Judge for online categories of Idaho Press Club, 2004
- Judge for online categories of the annual contest of the Arizona Press Club, 2003
- Judge for online categories for New England AP News Executives Association, 2003
- Judge for Quest for Excellence high school news contest, Daily News/Columbia Scholastic Press Assn, June 2001
- Judge for Web design contest for Assn for Education in Journalism and Mass Comm, April 2001
- Member of site visit team evaluating Emerson College Dept. of Journalism, March 2001
- Screener for Global Business Books Awards, 1997
- Judge for Pacific Northwest Journalism Contest, Society of Professional Journalists, Jan 1995

## Board of Directors/Advisers

### US BOARDS:

- [South Asian Journalists Association](#) (1994-present - co-founder; elected member of the executive board; first president, 2001-2002)
- [Consumer WebWatch Advisory Board](#) (2001-present)
- [Asian American Journalists Association](#), national board (2001-2003)
- [Harlem Center for Education](#) (2001-2005)
- [Asian Language Bilingual Education Technical Assistance Center](#), NYC Board of Education (2001-2005)
- [Ron Patel Scholarship Fund](#) (2000-2005)
- [Inequality.org](#) (2000-2003)
- [Corante](#) (2000-2005)
- [Featurewell](#) (2000-2005)
- [Tribeca Internet Initiatives](#) (1996-2001)
- [South Asian American Leaders of Tomorrow](#) (2001-2002)

### NON-US BOARDS:

- [Indian Institute of Journalism & New Media](#), Bangalore (2000-present)
- [Center for Independent Journalism](#), Budapest (2002-present)

## Community Service

- Teaching dozens of pro bono technology classes for nonprofit institutions around the country,

1997-present

- Emcee of, and presenter at, various annual events, including Excelsior Awards and scholarship dinner, Network of Indian Professionals; Asian American Legal Defence & Education Fund; Coalition for Asian American Children and Families; 1994-present  
Emcee of annual fundraising dinners, Karuna Charities, 1996-present
- Member of Honorary Leadership Team of South Asia Against AIDS Foundation annual benefit, July 2001
- Member of honorary host reception committee of Nat'l Lesbian & Gay Journalists Association, June 2000
- Informal adviser on media and technology for several small NYC, South Asian and Asian American nonprofits, 1994-present

## Interests

Comic strips, gadgets, baseball & NFL football (watching), golf (playing and watching), '60s rock & pop

## Summer 2006 / [Narrative version](#)

May 1998-present

**New Electronic Media** (Houghton Mifflin)

Co-author (with David A. Klatell)

Working with colleague on a textbook about the history and future of consumer technology



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of:	)	
	)	
2006 Quadrennial Regulatory Review – Review of	)	MB Docket No. 06-121
The Commission’s Broadcast Ownership Rules and	)	
Other Rules Adopted Pursuant to Section 202 of	)	
the Telecommunications Act of 1996	)	
	)	
	)	
2002 Quadrennial Regulatory Review – Review of	)	MB Docket No. 02-277
The Commission’s Broadcast Ownership Rules and	)	
Other Rules Adopted Pursuant to Section 202 of	)	
the Telecommunications Act of 1996	)	
	)	
	)	
Cross-Ownership of Broadcast	)	MM Docket No. 01-235
Stations and Newspapers	)	

**“REVIEW OF THE INCREASES IN  
NON-ENTERTAINMENT PROGRAMMING PROVIDED  
IN MARKETS WITH NEWSPAPER-OWNED TELEVISION STATIONS”: AN  
UPDATE**

**By Michael G. Baumann**

**Prepared for Media General, Inc.**

**October 2006**

***ECONOMISTS INCORPORATED***

## Introduction

This study examines whether the amount of news, information, educational and other non-entertainment programming is associated with common ownership of a daily newspaper and a local television station in the same market. It updates the analysis presented in an earlier study conducted by Dr. Samuel Lichter.<sup>1</sup> This study measures the amount and type of non-entertainment programming scheduled to air on television stations affiliated with the major broadcast networks in two types of markets: those in which there is common ownership of a daily newspaper and a television station (“convergence markets”) and those without common ownership of a daily newspaper and a television station (“non-convergence markets”). This study endeavors to replicate the research procedures and analytic categories of the previous study.

## Methodology

This study compared the programming in Nielsen Designated Market Areas (“DMAs”) where a television station and newspaper are cross-owned with the programming in the DMA just larger than each of these eleven DMAs, replicating network affiliate availability. The study was structured to include the six Media General convergence markets and the five additional convergence markets that are ranked below DMA 91 in order to track the effect of cross-ownership in medium and small markets. The next larger DMA was used to control for the effect of market size on programming decisions. Thus, for example, the study compared the Tampa/St. Petersburg (Sarasota) DMA (ranked #12) to the Detroit DMA (ranked #11).<sup>2</sup> The following is a list of the paired market studies:

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<sup>1</sup> *Review of the Increases in Non-Entertainment Programming Provided in Markets with Newspaper-Owned Television Stations*, Samuel Robert Lichter, Ph.D., December 2001, In the Matter of: Cross-Ownership of Broadcast Stations and Newspapers (MM Docket No. 01-235) and Newspaper/Radio Cross-Ownership Waiver Policy (MM Docket No. 96-197) (“Lichter Study”).

<sup>2</sup> DMA rankings are based on Nielsen Media Research’s Local Market Universe Estimates for the 2006-2007 television season, available at <http://www.nielsenmedia.com/nc/portal/site/Public/menuitem.55dc65b4a7d5adff3f65936147a062a0/?vgnextoid=6573d3b8b0c3d010VgnVCM100000ac0a260aRCRD>.

<b>Convergence Market</b>	<b>Paired Non-Convergence Market</b>
Tampa-St. Petersburg (Sarasota), FL (DMA #12)	Detroit, MI (DMA #11)
Roanoke-Lynchburg, VA (DMA #68)	Wichita-Hutchinson Plus, KS (DMA #67)
Tri-Cities, TN-VA (DMA #92)	Harlingen-Weslaco-Brownsville-McAllen, TX (DMA #91)
Baton Rouge, LA (DMA #93)	Harlingen-Weslaco-Brownsville-McAllen, TX (DMA #91) <sup>3</sup>
Waco-Temple-Bryan, TX (DMA #95)	Colorado Springs-Pueblo, CO (DMA #94)
Myrtle Beach-Florence, SC (DMA #105)	Lincoln & Hastings-Kearney, NE (DMA #104)
Fargo-Valley City, ND (DMA #119)	Boise, ID (DMA #118)
Columbus, GA (DMA #128)	La Crosse-Eau Claire, WI (DMA # 127)
Panama City, FL (DMA #156)	Anchorage, AK (DMA #154) <sup>4</sup>
Idaho Falls-Pocatello, ID (DMA #163)	Minot-Bismarck-Dickinson, ND (DMA #158) <sup>5</sup>
Quincy, IL-Hannibal, MO-Keokuk, IA (DMA #171)	Billings, MT (DMA #170)

For each market analyzed, program listings were obtained from *TV Guide* for the full-power television stations affiliated with the ABC, CBS, NBC, and Fox broadcast networks. For each included station, the study examined the programming scheduled to

<sup>3</sup> The DMA ranked immediately larger than Baton Rouge is also a convergence market, so the comparison was made to the non-convergence market that was ranked two larger.

<sup>4</sup> The DMA ranked immediately larger than Panama City only had two major-network affiliated stations, only one of which was the same affiliation as the stations in Panama City. To replicate market conditions in the convergence market, the comparison was made to the DMA ranked two larger.

<sup>5</sup> The DMA ranked immediately larger than Idaho Falls-Pocatello only had two major-network affiliated stations. To replicate market conditions in the convergence market, the comparison was made to the next largest DMA with all four network affiliates as in Idaho Falls-Pocatello.

be broadcast during the week of Sunday, September 10, 2006 through Saturday, September 16, 2006.

The study identified and categorized all non-entertainment programming on each station during the sample week. With the exception of educational children's programming, the study relied on programming categories identified in the *TV Guide* listings to identify non-entertainment programming.<sup>6</sup> To identify educational children's programming, the study relied on Children's Television Programming Reports (FCC Form 398) filed by the stations with the FCC and made available on the FCC's Internet web site.

Each non-entertainment program scheduled to broadcast on the studied stations was coded according to one of the following seven categories:<sup>7</sup>

1. *Newscasts*: Regularly scheduled local and national newscasts, such as "ABC's World News with Charles Gibson," "CBS Evening News," "NBC Nightly News," and local news broadcasts.

2. *News/Information*: Regularly scheduled local and national news and information programming addressing current events not part of a regular newscast. This included network morning shows (*e.g.*, "Today," "Good Morning America," "Early Show") as well as prime-time news magazines (*e.g.*, "60 Minutes," "Dateline NBC," "20/20"). This category excluded tabloid shows (*e.g.*, "Inside Edition," "Entertainment Tonight," "Extra") and talk shows (*e.g.*, "Maury," "Montel Williams," "The View").

3. *Public Affairs*: Local and national programming addressing current events with newsmakers or other relevant individuals. This included programs such as "Nightline," "Meet the Press," and "Face the Nation."

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<sup>6</sup> For programming that was designated by *TV Guide* as "Other-Other," the program type and category was assigned based on information about the program obtained from web sites, primarily DRTV Media Planner at <http://tv.backchannelmedia.com>.

<sup>7</sup> The categories of non-entertainment programming are the same as used in the Lichter Study.

4. *Instructional*: Local and national programming providing information, instruction, or advice. This category included shows like “Martha,” “Bob Villa,” “Rebecca’s Gardens,” and “Dr. Phil.”
5. *Children’s Educational*: Programming with educational or informational value to children ages sixteen years or younger, according to the studied stations’ FCC Form 398s. This category included programming such as “Blue’s Clues,” “That’s So Raven,” “Jack Hanna’s Animal Adventures,” and “Sherlock Holmes in the 22<sup>nd</sup> Century.”
6. *Religious*: Programming featuring a religious service or addressing religious topics. The sample included several local church services as well as syndicated offerings such as “Shepherd’s Chapel,” “Life Today,” and “The Old Time Gospel Hour.”
7. *Agriculture*: Local and national programming about agricultural news, farming techniques and related topics. This category includes “Ag Day” and “U.S. Farm Report.”

After categorizing the programming appearing on the studied stations during the sample week, the study quantified the amount of non-entertainment programming broadcast. Tables 2 through 21 provide this information for each of the twenty-one DMAs covered in the study. By aggregating the data across a similar set of network-affiliated stations in each DMA, it is possible to compare the results for each pair of markets.

### **Convergence Markets Offer More Non-Entertainment Programming**

Table 1 summarizes the study results from all eleven convergence markets and the corresponding non-convergence control markets. The relationship between Table 1 and the supporting Tables 2 through 22 can be illustrated using the first pair of markets in Table 1. The two rows in the first block of Table 1 highlight the comparison between Tampa-St. Petersburg and Detroit. The average hours of non-entertainment programming in these rows is taken from Table 2, which provides the individual market results for the

non-convergence market of Detroit, and Table 3, which provides the results for the convergence market of Tampa-St. Petersburg.

Table 1 indicates that the four major-network-affiliated stations in Tampa-St. Petersburg broadcast substantially more non-entertainment programming than the four comparable stations in Detroit: an average of 71.8 hours per station per week in the convergence market as compared to 62.0 hours in the non-convergence market. This 9.8 hour weekly difference represents 1.4 additional hours of non-entertainment programming per station per day in the convergence market of Tampa-St. Petersburg.

Tables 4 through 22 present the results for each of the other convergence and non-convergence markets studied, and the totals for these markets are also summarized in Table 1. To facilitate comparisons between markets, Table 1 also reports the differences in percentage terms. For example, there is 16 percent more non-entertainment programming in the convergence market Tampa-St. Petersburg than in the non-convergence market Detroit.

The data appearing in Table 1 indicate that in nine out of the eleven matched pairs the stations in the convergence market aired more non-entertainment programming than the stations in the paired non-convergence market. The differences range from a high of 11.3 additional hours in the Idaho Falls-Pocatello – Minot-Bismarck-Dickinson pairing to a low of 0.1 additional hours in the Columbus – La Cross-Eau Claire pairing. In the Roanoke-Lynchburg – Wichita-Hutchinson pairing and the Fargo-Valley City – Boise pairing the stations in the non-convergence market broadcast more hours of non-entertainment programming than the stations in the paired convergence market.

When all eleven pairs are considered together, the cumulative average amount of non-entertainment programming in the convergence markets exceeds the amount in the non-convergence markets by 2.7 hours per station, which means that overall non-entertainment programming in convergence markets exceeded that in non-convergence markets by 5 percent.

## **Conclusion**

This study updates a prior study that examined matched convergence and non-convergence markets of similar size and examined the amount of non-entertainment broadcast television programming in the market. As was true with the findings of the earlier study, convergence markets are associated with levels of non-entertainment programming that are, on average, five percent higher. This study also includes additional small and medium convergence markets of which we are aware and finds the same basic results.

<b>Table 1</b> <b>Convergence vs. Non-Convergence Markets:</b> <b>Hours of Non-Entertainment Programming Per Week</b>				
<b>Market Pair</b>	<b>DMA No.</b>	<b>Average per Station</b>	<b>Difference</b>	<b>Percentage Difference</b>
Detroit, MI	11	62.0		
* Tampa-St. Petersburg (Sarasota), FL	12	71.8	9.8	16%
Wichita-Hutchinson, KS (Plus)	67	60.0		
* Roanoke-Lynchburg, VA	68	52.3	- 7.8	-13%
Harlingen-Weslaco-Brownsville-McAllen, TX	91	46.3		
* Tri-Cities, TN-VA	92	49.9	3.7	8%
Harlingen-Weslaco-Brownsville-McAllen, TX	91	46.3		
* Baton Rouge, LA	93	52.1	5.8	13%
Colorado Springs-Pueblo, CO	94	53.0		
* Waco-Temple-Bryan, TX	95	56.8	3.7	7%
Lincoln & Hastings-Kearney, NE	104	47.0		
* Myrtle Beach-Florence, SC	105	54.8	7.8	17%
Boise, ID	118	60.8		
* Fargo-Valley City, ND	119	52.6	- 8.1	-13%
La Crosse-Eau Claire, WI	127	50.8		
* Columbus, GA	128	50.9	0.1	0%
Anchorage, AK	154	53.6		
* Panama City, FL	156	55.5	1.9	3%
Minot-Bismarck-Dickinson, ND	158	42.0		
* Idaho Falls-Pocatello, ID	163	53.3	11.3	27%
Billings, MT	170	65.3		
* Quincy-Hannibal-Keokuk, IA	171	66.5	1.2	2%
AVERAGE FOR CONTROL MARKETS		53.4		
AVERAGE FOR CONVERGENCE MARKETS		56.0	2.7	5%

\*Convergence Market

Note: Totals may not sum precisely due to rounding.



<b>Table 2</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Detroit DMA #11</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	140.7	35.2	20.9%
News/Information	67.0	16.8	10.0%
Public Affairs	8.5	2.1	1.3%
Instructional	20.0	5.0	3.0%
Children's Educational	7.5	1.9	1.1%
Religion	4.0	1.0	0.6%
Agriculture	0.5	0.1	0.1%
<b>TOTAL</b>	<b>248.2</b>	<b>62.0</b>	<b>36.9%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 3</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Tampa-St. Petersburg (Sarasota) DMA #12</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	179.2	44.8	26.7%
News/Information	73.6	18.4	11.0%
Public Affairs	6.8	1.7	1.0%
Instructional	18.7	4.7	2.8%
Children's Educational	6.8	1.7	1.0%
Religion	2.3	0.6	0.3%
Agriculture	0.0	0.0	0.0%
<b>TOTAL</b>	<b>287.3</b>	<b>71.8</b>	<b>42.8%</b>

Note: Totals may not sum precisely due to rounding.

The hours of non-entertainment programming on the two ABC affiliates in the DMA, WFTS and WWSB, were averaged and the average result treated as one station.

<b>Table 4</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Wichita-Hutchinson Plus DMA #67</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	112.1	28.0	16.8%
News/Information	67.5	16.9	10.1%
Public Affairs	6.0	1.5	0.9%
Instructional	18.0	4.5	2.7%
Children's Educational	10.5	2.6	1.6%
Religion	22.0	5.5	3.3%
Agriculture	4.0	1.0	0.6%
<b>TOTAL</b>	<b>240.1</b>	<b>60.0</b>	<b>36.0%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 5</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Roanoke-Lynchburg DMA #68</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	81.6	20.4	12.1%
News/Information	77.5	19.4	11.5%
Public Affairs	7.5	1.9	1.1%
Instructional	18.5	4.6	2.8%
Children's Educational	7.0	1.8	1.0%
Religion	13.5	3.4	2.0%
Agriculture	3.5	0.9	0.5%
<b>TOTAL</b>	<b>209.1</b>	<b>52.3</b>	<b>31.1%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 6</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Harlingen-Weslaco-Brownsville-McAllen DMA #91</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	92.6	23.1	13.8%
News/Information	62.0	15.5	9.2%
Public Affairs	6.0	1.5	0.9%
Instructional	15.5	3.9	2.3%
Children's Educational	6.5	1.6	1.0%
Religion	1.5	0.4	0.2%
Agriculture	1.0	0.3	0.1%
<b>TOTAL</b>	<b>185.1</b>	<b>46.3</b>	<b>27.5%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 7</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Tri-Cities, TN-VA DMA #92</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	97.9	24.5	14.6%
News/Information	62.0	15.5	9.2%
Public Affairs	6.9	1.7	1.0%
Instructional	12.9	3.2	1.9%
Children's Educational	11.5	2.9	1.7%
Religion	7.5	1.9	1.1%
Agriculture	1.0	0.3	0.1%
<b>TOTAL</b>	<b>199.8</b>	<b>49.9</b>	<b>29.7%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 8</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Baton Rouge DMA #93</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	86.3	21.6	12.8%
News/Information	76.0	19.0	11.3%
Public Affairs	7.5	1.9	1.1%
Instructional	16.0	4.0	2.4%
Children's Educational	10.0	2.5	1.5%
Religion	11.0	2.8	1.6%
Agriculture	1.5	0.4	0.2%
<b>TOTAL</b>	<b>208.3</b>	<b>52.1</b>	<b>31.0%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 9</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Colorado Springs-Pueblo DMA #94</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	94.3	23.6	14.2%
News/Information	74.5	18.6	11.2%
Public Affairs	7.0	1.8	1.1%
Instructional	17.9	4.5	2.7%
Children's Educational	9.0	2.3	1.4%
Religion	8.5	2.1	1.3%
Agriculture	1.0	0.3	0.2%
<b>TOTAL</b>	<b>212.2</b>	<b>53.0</b>	<b>32.0%</b>

Note: Totals may not sum precisely due to rounding.



<b>Table 10</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Waco-Temple-Bryan DMA #95</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	96.1	24.0	14.4%
News/Information	67.5	16.9	10.1%
Public Affairs	13.0	3.3	1.9%
Instructional	25.9	6.5	3.9%
Children's Educational	7.0	1.8	1.0%
Religion	17.5	4.4	2.6%
Agriculture	0.0	0.0	0.0%
<b>TOTAL</b>	<b>227.0</b>	<b>56.8</b>	<b>33.9%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 11</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Lincoln &amp; Hastings-Kearney DMA #104</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	76.5	25.5	15.9%
News/Information	34.3	11.4	7.1%
Public Affairs	5.0	1.7	1.0%
Instructional	8.5	2.8	1.8%
Children's Educational	10.3	3.4	2.1%
Religion	3.0	1.0	0.6%
Agriculture	3.5	1.2	0.7%
<b>TOTAL</b>	<b>141.0</b>	<b>47.0</b>	<b>29.2%</b>

Note: Totals may not sum precisely due to rounding.

The hours of non-entertainment programming on the two ABC affiliates in the DMA, KHGI and KLKN, were averaged and the average result treated as one station.

The data set excludes the programming of station KHAS in order to replicate affiliate availability in the non-control market.

<b>Table 12</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Myrtle Beach-Florence DMA #105</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	74.8	24.9	14.8%
News/Information	45.0	15.0	8.9%
Public Affairs	6.5	2.2	1.3%
Instructional	17.0	5.7	3.4%
Children's Educational	8.5	2.8	1.7%
Religion	11.5	3.8	2.3%
Agriculture	1.0	0.3	0.2%
<b>TOTAL</b>	<b>164.3</b>	<b>54.8</b>	<b>32.6%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 13</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Boise DMA #118</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	123.9	31.0	18.4%
News/Information	77.8	19.4	11.6%
Public Affairs	7.9	2.0	1.2%
Instructional	15.9	4.0	2.4%
Children's Educational	12.5	3.1	1.9%
Religion	1.5	0.4	0.2%
Agriculture	3.5	0.9	0.5%
<b>TOTAL</b>	<b>243.0</b>	<b>60.8</b>	<b>36.2%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 14</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Fargo-Valley City DMA #119</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	78.5	19.6	13.4%
News/Information	63.0	15.8	10.8%
Public Affairs	13.5	3.4	2.3%
Instructional	19.0	4.8	3.3%
Children's Educational	12.0	3.0	2.1%
Religion	20.0	5.0	3.4%
Agriculture	4.5	1.1	0.8%
<b>TOTAL</b>	<b>210.5</b>	<b>52.6</b>	<b>36.1%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 15</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in La Crosse-Eau Claire DMA #127</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	100.5	25.1	15.7%
News/Information	59.0	14.8	9.2%
Public Affairs	5.5	1.4	0.9%
Instructional	16.5	4.1	2.6%
Children's Educational	10.5	2.6	1.6%
Religion	10.3	2.6	1.6%
Agriculture	1.0	0.3	0.2%
<b>TOTAL</b>	<b>203.3</b>	<b>50.8</b>	<b>31.8%</b>

Note: Totals may not sum precisely due to rounding.

The hours of non-entertainment programming on the two ABC affiliates in the DMA, WXOW and WQOW, were averaged and the average result treated as one station.

<b>Table 16</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Columbus, GA DMA #128</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	80.7	20.2	12.1%
News/Information	60.0	15.0	9.0%
Public Affairs	11.0	2.8	1.7%
Instructional	22.0	5.5	3.3%
Children's Educational	8.5	2.1	1.3%
Religion	21.0	5.3	3.2%
Agriculture	0.5	0.1	0.1%
<b>TOTAL</b>	<b>203.7</b>	<b>50.9</b>	<b>30.6%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 17</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Anchorage DMA #154</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	64.3	21.4	12.8%
News/Information	48.6	16.2	9.6%
Public Affairs	8.4	2.8	1.7%
Instructional	14.5	4.8	2.9%
Children's Educational	6.0	2.0	1.2%
Religion	17.0	5.7	3.4%
Agriculture	2.0	0.7	0.4%
<b>TOTAL</b>	<b>160.8</b>	<b>53.6</b>	<b>31.9%</b>

Note: Totals may not sum precisely due to rounding.

The data set excludes the programming of station KTVA in order to replicate affiliate availability in the non-control market.



<b>Table 18</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Panama City DMA #156</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	69.6	23.2	13.8%
News/Information	38.9	13.0	7.7%
Public Affairs	6.0	2.0	1.2%
Instructional	21.4	7.1	4.2%
Children's Educational	5.5	1.8	1.1%
Religion	25.0	8.3	5.0%
Agriculture	0.0	0.0	0.0%
<b>TOTAL</b>	<b>166.4</b>	<b>55.5</b>	<b>33.0%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 19</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Minot-Bismarck-Dickinson DMA #158</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	56.1	14.0	9.7%
News/Information	59.7	14.9	10.3%
Public Affairs	8.3	2.1	1.4%
Instructional	23.5	5.9	4.1%
Children's Educational	9.5	2.4	1.6%
Religion	7.5	1.9	1.3%
Agriculture	3.5	0.9	0.6%
<b>TOTAL</b>	<b>168.1</b>	<b>42.0</b>	<b>29.0%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 20</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Idaho Falls-Pocatello DMA #163</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	99.7	24.9	15.7%
News/Information	66.5	16.6	10.5%
Public Affairs	6.0	1.5	0.9%
Instructional	16.0	4.0	2.5%
Children's Educational	14.0	3.5	2.2%
Religion	7.5	1.9	1.2%
Agriculture	3.5	0.9	0.6%
<b>TOTAL</b>	<b>213.2</b>	<b>53.3</b>	<b>33.6%</b>

Note: Totals may not sum precisely due to rounding.

<b>Table 21</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Billings DMA #170</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	60.8	30.4	18.1%
News/Information	45.4	22.7	13.5%
Public Affairs	3.0	1.5	0.9%
Instructional	13.5	6.8	4.0%
Children's Educational	2.0	1.0	0.6%
Religion	5.5	2.8	1.6%
Agriculture	0.4	0.2	0.1%
<b>TOTAL</b>	<b>130.6</b>	<b>65.3</b>	<b>38.9%</b>

Note: Totals may not sum precisely due to rounding.

The data set excludes the programming of stations KSVI and KHMT in order to replicate affiliate availability in the non-control market.

<b>Table 22</b> <b>Amount of Non-Entertainment Programming Broadcast</b> <b>in Quincy-Hannibal-Keokuk DMA #171</b>			
<b>Program Type</b>	<i>Total Length (in Hours)</i>	<i>Weekly Average (in Hours)</i>	<i>% of Total Broadcast Hours</i>
Newscasts	49.1	24.5	14.6%
News/Information	53.0	26.5	15.8%
Public Affairs	3.0	1.5	0.9%
Instructional	13.4	6.7	4.0%
Children's Educational	3.0	1.5	0.9%
Religion	8.0	4.0	2.4%
Agriculture	3.5	1.8	1.0%
<b>TOTAL</b>	<b>133.0</b>	<b>66.5</b>	<b>39.6%</b>

Note: Totals may not sum precisely due to rounding.

The data set excludes the programming of CGEM since it only provides programming via cable or as a digital channel.

Presidential Editorial Endorsements 2004 -- Media General, Inc.

Name of Paper		Community
<b>Pro-Bush</b>		
<i>Bristol Herald Courier</i>		Bristol, VA
<i>Danville Register &amp; Bee</i>		Danville, VA
<i>Richmond Times-Dispatch</i>		Richmond, VA
<b>Endorsed Neither</b>		
<i>Tampa Tribune</i>		Tampa, FL
<i>Winston-Salem Journal</i>		Winston-Salem, NC

**Presidential Editorial Endorsements 2004 -- Gannett Company, Inc.**

Name of Paper	Community
<b>Pro-Bush</b>	
<i>The Desert Sun</i>	Palm Springs, CA
<i>Daily Advertiser</i>	Lafayette, LA
<i>The Clarion-Ledger</i>	Jackson, MS
<i>Asbury Park Press</i>	Neptune, NJ
<i>Poughkeepsie Journal</i>	Poughkeepsie, NY
<i>The Advocate</i>	Newark, OH
<i>Chillicothe Gazette</i>	Chillicothe, OH
<i>The Cincinnati Enquirer</i>	Cincinnati, OH
<i>The News-Herald</i>	Lake County-Willoughby, OH
<i>News Journal</i>	Mansfield, OH
<i>The Greenville News</i>	Greenville, SC
<i>Argus Leader</i>	Sioux Falls, SD
<i>Leaf-Chronicle</i>	Clarksville, TN
<i>The Daily News Leader</i>	Staunton, VA
<i>The Post-Crescent</i>	Appleton, WI
<b>Pro-Kerry</b>	
<i>Montgomery Advertiser</i>	Montgomery, AL
<i>Fort Collins Coloradoan</i>	Fort Collins, CO
<i>The News Journal</i>	Wilmington, DE
<i>Florida Today</i>	Melbourne, FL
<i>The Honolulu Advertiser</i>	Honolulu, HI
<i>Journal and Courier</i>	Lafayette, IN
<i>The Des Moines Register</i>	Des Moines, IA
<i>Iowa City Press-Citizen</i>	Iowa City, IA
<i>The Courier-Journal</i>	Louisville, KY
<i>The Times</i>	Shreveport, LA
<i>Battle Creek Enquirer</i>	Battle Creek, MI
<i>Detroit Free Press</i>	Detroit, MI
<i>Lansing State Journal</i>	Lansing, MI
<i>Times Herald</i>	Port Huron, MI
<i>St. Cloud Times</i>	St. Cloud, MN
<i>Springfield News-Leader</i>	Springfield, MO
<i>Reno Gazette-Journal</i>	Reno, NV
<i>Courier News</i>	Bridgewater, NJ
<i>Courier-Post</i>	Camden, NJ
<i>The Daily Journal</i>	Vineland, NJ
<i>Daily Record</i>	Parsippany, NJ
<i>The Journal-News</i>	White Plains, NY
<i>Rochester Democrat and Chronicle</i>	Rochester, NY
<i>Star-Gazette</i>	Elmira, NY

**Presidential Editorial Endorsements 2004 -- Gannett Company, Inc.**  
*(Continued)*

Name of Paper	Community
<i>Asheville Citizen Times</i>	Asheville, NC
<i>Statesman Journal</i>	Salem, OR
<i>The Jackson Sun</i>	Jackson, TN
<i>The Tennessean</i>	Nashville, TN
<i>The Burlington Free Press</i>	Burlington, VT
<i>Huntington Herald-Dispatch</i>	Huntington, WV
<i>The Sheboygan Press</i>	Sheboygan, WI
<i>The Wausau Daily Herald</i>	Wausau, WI



**Presidential Editorial Endorsements 2004 -- Tribune Company**

Name of Paper		Community
<b>Pro-Bush</b>		
<i>The Hartford Courant</i>		Hartford, CT
<i>Chicago Tribune</i>		Chicago, IL
<b>Pro-Kerry</b>		
<i>Orlando Sentinel</i>		Orlando, FL
<i>South Florida Sun-Sentinel</i>		Ft. Lauderdale, FL
<i>The Sun</i>		Baltimore, MD
<i>Newsday</i>		Melville, NY
<i>The Morning Call</i>		Allentown, PA
<i>Daily Press</i>		Newport News, VA

**Presidential Editorial Endorsements 2004 -- Cox Newspapers, Inc.**

Name of Paper		Community
<b>Pro-Bush</b>		
<i>The Daily Sentinel</i>		Grand Junction, CO
<i>Austin American-Statesman</i>		Austin, TX
<b>Pro-Kerry</b>		
<i>The Palm Beach Post</i>		Palm Beach, FL
<i>Atlanta Journal-Constitution</i>		Atlanta, GA
<i>Daily Advance</i>		Elizabeth City, NC
<i>The Daily Reflector</i>		Greenville, NC
<i>Dayton Daily News</i>		Dayton, OH
<i>The Lufkin Daily News</i>		Lufkin, TX
<i>Waco Tribune-Herald</i>		Waco, TX

**Presidential Editorial Endorsements 2004 -- The New York Times Company**

Name of Paper		Community
<b>Pro-Bush</b>		
<i>The Ledger</i>		Lakeland, FL
<i>Ocala Star-Banner</i>		Ocala, FL
<i>Herald-Journal</i>		Spartanburg, SC
<i>TimesDaily</i>		Florence, AL
<i>The Gadsden Times</i>		Gadsden, AL
<b>Pro-Kerry</b>		
<i>The New York Times</i>		New York, NY
<i>The Boston Globe</i>		Boston, MA
<i>Telegram &amp; Gazette</i>		Worcester, MA
<i>Sarasota Herald-Tribune</i>		Sarasota, FL
<i>The Press Democrat</i>		Santa Rosa, CA
<i>Star-News</i>		Wilmington, NC
<i>The Gainesville Sun</i>		Gainesville, FL
<i>The Tuscaloosa News</i>		Tuscaloosa, AL
<b>Endorsed Neither</b>		
<i>The Courier</i>		Houma, LA

**Temporal Comparison Of Television Stations,  
Radio Stations, and Cable Penetration (1975 to 2006)**

	<u>Television Stations in DMA</u> <u>1975 Data</u> <sup>1</sup>		<u>Television Stations in DMA</u> <u>2005 Data</u> <sup>2</sup>	
Tampa	4 commercial	2 non-commercial	12 commercial	2 non-commercial
Roanoke	3 commercial	1 non-commercial	7 commercial	1 non-commercial
Tri-Cities	3 commercial	2 non-commercial	5 commercial	2 non-commercial
Myrtle Beach	1 commercial	1 non-commercial	4 commercial	3 non-commercial
Columbus	3 commercial	3 non-commercial	5 commercial	2 non-commercial
Panama City	2 commercial	0 non-commercial	5 commercial	1 non-commercial

	<u>Radio Stations in DMA</u> <u>1975 Data</u> <sup>3</sup> <u>2006 Data</u> <sup>4</sup>	
Tampa	35	48
Roanoke	25	41
Tri-Cities	24	42
Myrtle Beach	9	53
Columbus	10	21
Panama City	8	20

	<u>Cable Penetration in DMA</u> <u>1975 Data</u> <sup>5</sup> <u>2005 Data</u> <sup>6</sup>	
Tampa	13%	75%
Roanoke	12%	55%
Tri-Cities	24%	72%
Myrtle Beach	24%	71%
Columbus	27%	76%
Panama City	27%	64%

<sup>1</sup> 1976 Broadcasting and Cable Yearbook

<sup>2</sup> 2006 Broadcasting and Cable Yearbook

<sup>3</sup> Broadcasting Yearbook 1976

<sup>4</sup> BIA Financial Network, Investing in Radio 2006; 2006 Broadcasting and Cable Yearbook

<sup>5</sup> 1976 TV & Cable Factbook

<sup>6</sup> 2006 TV & Cable Factbook

**Local Cable Programming in Media General Cross-Ownership Markets<sup>1</sup>**

**Tampa/St. Petersburg, Florida**

- Bighthouse (formerly Time Warner) offers Bay News 9, 24-hour local news network<sup>2</sup>
  - Includes (on some systems): Bay News 9 en Espanol, Bay News 9 Weather Now, Tampa Bay onDemand<sup>3</sup>
  - Also offers Catch 47 - Tampa Bay Sports Television<sup>4</sup>
  - TOWNCenter Channel 19 – Local Real Estate Channel – includes listings, advertising in Manatee County<sup>5</sup>
- Some Comcast systems receive SNN Local News, 24-hour local news channel in conjunction with Sarasota Herald-Tribune<sup>6</sup>
  - Programs such as SNN Sports, What’s Cookin,’ This Week Online, State of the Arts, Play, Gulf Coast Living, Open House, Ticket<sup>7</sup>
- City of Tampa TV – CCTV – municipal meetings and local programming<sup>8</sup>
  - Spotlight Tampa, Shades of Tampa, Focus on the Basics, Que Pasa Tampa, The Mayor’s Hour, It Starts in Parks, Hurricane Preparation special (seasonal)<sup>9</sup>
- Hillsborough County TV (HTV22) – municipal meetings and local programming<sup>10</sup>
  - County Update – daily news update
  - Inside Hillsborough County – local officials “explain the meaning behind the news.”
  - Also offers “S.A.F.E. & Sound,” “Timeline,” “Traditions,” “Informes Latino”
  - Seasonally offers special “Storm Ready in Hillsborough County” programs providing hurricane-preparedness information

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<sup>1</sup> This listing of local cable programming is not comprehensive, and additional programming may be available in each market. All websites listed were visited in July or August 2006.

<sup>2</sup> <http://www.baynews9.com/home.html>

<sup>3</sup> <http://www.baynews9.com/tbod.com> (Tampa Bay onDemand home page)

<sup>4</sup> [http://www.catch47.com/whats\\_the\\_catch.html](http://www.catch47.com/whats_the_catch.html)

<sup>5</sup> <http://www.findsarasota.com/listing.asp?id=809>

<sup>6</sup> <http://www.heraldtribune.com/apps/pbcs.dll/section?Category=NEWS10>

<sup>7</sup> <http://www.heraldtribune.com/apps/pbcs.dll/section?CATEGORY=SNN03>

<sup>8</sup> [http://www.tampagov.net/dept\\_Cable\\_Communications/cttv/](http://www.tampagov.net/dept_Cable_Communications/cttv/)

<sup>9</sup> Id., [http://www.tampagov.net/dept\\_Cable\\_Communications/cttv/program\\_descriptions.asp](http://www.tampagov.net/dept_Cable_Communications/cttv/program_descriptions.asp)

<sup>10</sup> <http://www.htv22.org>

- Pinellas County – Pinellas 18 Television<sup>11</sup>
  - Inside Pinellas – 30-minute weekly news program
  - Hurricane 101
  - Coverage of The Pinellas Folk Festival
  - Progressive Pinellas
- Hernando County – Hernando County Government Broadcasting<sup>12</sup>
  - Meetings and programs such as “Issues and Answers,” Focus on Hernando,” “Healthy Hernando,” “Behind the Star,” and “Understanding the Law.”

Tampa/St. Petersburg, Florida and Panama City, Florida

- SunSports and Fox SportsNet Florida<sup>13</sup>
  - SunSports (formerly Sunshine Network)
    - Has Florida-based studios where it produces “original programming targeting Florida sports fans,” including “Chevy Tailgate Saturday,” (began 2003) college football show with live postgame coverage of every FSU and UF football game, “Sportstalk Live,” (began fall 2003) hosts members of statewide media in roundtable discussion of state sports, “Chevy Florida Fishing Report” (began 2004) – Emmy winning live fishing report, “Under the Lights” (began 2004) – “behind the scenes look at some of Florida’s top sports stories and newsmakers away from the playing fields.”
    - Covers local public affairs in conjunction with the Florida Cable Telecommunications Association – daily programming usually 30 minutes<sup>14</sup>
      - “Capital Dateline,” which includes episodes such as “Hurricane Preparedness,” “Capital News,” Former Governor’s Roundtable,” “On the Road to Governor.”

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<sup>11</sup> [http://www.pinellascounty.org/tv\\_18.htm](http://www.pinellascounty.org/tv_18.htm), [http://www.pinellascounty.org/tv\\_highlights.htm](http://www.pinellascounty.org/tv_highlights.htm)

<sup>12</sup> <http://www.co.hernando.fl.us/cr/about.htm>, <http://www.co.hernando.fl.us/cr/HCGBSchedule.htm>

<sup>13</sup> <http://www.sunsportstv.com/about.jsp>

<sup>14</sup> <http://www.fcta.com/programming.html>

### Roanoke-Lynchburg, Virginia

- Channel 3 Roanoke Valley Television (City & County of Roanoke and Town of Vinton)<sup>15</sup>
  - Live Meetings and original programming, including:<sup>16</sup>
    - Inside Roanoke – profiles city programs and projects each month
    - Roanoke County Today – designed to inform residents about County services and events
    - Spotlight on City Schools – informative look at a wide variety of school issues, focusing on student and teacher viewpoints
    - Accent Excellence – exciting programs and activities of county school system
- WCOX (Cox cable system in Roanoke – programming locally produced by Cox)<sup>17</sup>
  - In the News – weekly roundtable discussion of news topics and effects on Roanoke
  - Politically Speaking – monthly show with elected officials discussing views on current issues
  - Collage – monthly show on arts and culture in Roanoke Valley
  - Connections –monthly show on technology issues
  - Round Roanoke – monthly events program showcasing local organizations
  - Inside the Outside – showcasing local outdoor activities and attractions
  - In 2005 gubernatorial campaign, rebroadcast debate up to six times per week leading up to the election<sup>18</sup>
- WTOB (Government Access channel on Adelphia system in Blacksburg)<sup>19</sup>
  - Offers government coverage and original programming<sup>20</sup>

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<sup>15</sup> <http://www.rvtv.org/about.htm>

<sup>16</sup> <http://www.rvtv.org/monthlyshows.htm>

<sup>17</sup> <http://www.wcox9.com>, (show descriptions provided in Flash on home page (no separate addresses))  
<http://www.wcox9.com/html/schedule>

<sup>18</sup> See Michael Sluss, Gubernatorial Hopefuls Say They Support Biodiesel Fuel, Roanoke Times, Sept. 25, 2005, available at <http://www.roanoke.com/politics/wb/wb/xp-33544>

<sup>19</sup> [http://www.blacksburg.va.us/town\\_manager/annualreport/pubinfo.php](http://www.blacksburg.va.us/town_manager/annualreport/pubinfo.php)

<sup>20</sup> <http://www.blacksburg.gov/calendar.php?wtob=1> (schedule); <http://www.blacksburg.gov/wtob/programs/>

- Historic Lecture Series – presented by Blacksburg Museum and Historic Smithfield – guest speakers on history of Blacksburg, preservation and restoration<sup>21</sup>
- Energy: Your Recreation Guide – outdoor and indoor activities hosted by Blacksburg Parks and Recreation<sup>22</sup>
- Blacksburg High School Football – teams with local WFNR-FM to bring full live play-by-play video coverage, including replays and color commentary<sup>23</sup>
- Blacksburg Newslane – wide-ranging newsmagazine program<sup>24</sup>
- Community Bulletin Board<sup>25</sup>
- City of Danville – City-TV 20 Government Access<sup>26</sup>
  - On-air beginning November 2005 – includes government meetings and local programming
  - City Manager Reports – weekly discussion program on timely issues concerning the City of Danville – hosted by the City Manager<sup>27</sup>
  - Danville in Focus – monthly news program – “bringing your city more in focus with timely, insightful, and intriguing stories to keep you better informed.”<sup>28</sup>
- Martinsville Government Television 22<sup>29</sup>
  - Local Government meetings, local high school sports, and local programs
    - Ask the City Manager – answers letters and e-mails
    - Martinsville’s Most Wanted – with Martinsville Police Department
    - Public Priorities – public affairs program with regional, state and national leaders discussing views on Martinsville and surrounding area

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<sup>21</sup> <http://www.blacksburg.gov/wtob/programs/hlsprogram.php>

<sup>22</sup> <http://www.blacksburg.gov/wtob/programs/eyrgprogram.php>

<sup>23</sup> <http://www.blacksburg.gov/wtob/programs/bhsfprogram.php>

<sup>24</sup> <http://www.blacksburg.gov/wtob/programs/bnprogram.php>

<sup>25</sup> <http://www.blacksburg.gov/wtob/index.php>

<sup>26</sup> <http://www.danville-va.gov/departments.asp?menuid=2820&sub1menuid=2824&sub2menuid=5018>

<sup>27</sup> <http://www.danville-va.gov/news.asp?cid=3094>

<sup>28</sup> <http://www.danville-va.gov/page.asp?menuid=2820&sub1menuid=2824&sub2menuid=5018&sub3menuid=9228>

<sup>29</sup> <http://www.ci.martinsville.va.us/mgtv/index.htm>



### Roanoke-Lynchburg, Virginia and Tri-Cities, Tennessee/Virginia

- Virginia Farm Bureau Federation produces “Down Home Virginia,” available on numerous government and public access channels throughout the state – agricultural news and family-related stories<sup>30</sup>
  - Roanoke: Blacksburg, Danville, Lexington, Lynchburg, Roanoke
  - Tri-Cities: Bristol, Coeburn, Dickenson County, Lee County, Washington County, Wise County

### Tri-Cities, Tennessee/Virginia

- Appalachian Regional Community Television (Russell, Scott, Washington Counties and Bristol City)<sup>31</sup>
  - Local government, religious services, musical programs, and local sports:
    - Appalachian League minor league baseball (teams in cities throughout DMA, including Danville, Bristol, Johnson City, Kinsport, Bluefield, Pulaski)
    - “Pickin in the Park,” “Bluegrass on Broad Street,” “Appalachian Echoes,” “State Street,” “2 Bristol Bankers,” “Mountain Music Show.”
- Appalachian State University – Appalachian Perspective – on Charter System in Boone, NC – University’s education and public service programs<sup>32</sup>
- Charter system in Johnson City provides substantial local programming, including high school football, “CMS Dining Guide,” “Inside ETSU” (Eastern Tennessee State University)<sup>33</sup>

### Myrtle Beach-Florence, South Carolina

- News 14 Carolina – Time-Warner’s 24 hour local news channel<sup>34</sup>
  - On some North Carolina systems in DMA
- “Southern Style” – 30-minute daily show on Time Warner Myrtle Beach systems hosted by Diane DeVaughn Stokes (Channel 5 North and 17 South)<sup>35</sup>

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<sup>30</sup> <http://www.vafb.com/downhomeva/downhomeva.asp>

<sup>31</sup> <http://www.arcomtv.com>

<sup>32</sup> <http://www.perspective.appstate.edu/>

<sup>33</sup> Program schedule for week of August 10, 2006 provided by Charter Media Services

<sup>34</sup> <http://www.timewarnercable.com/nc/community/news14.html>

<sup>35</sup> See <http://www.mbchamber.com/cvb/media/mediacontacts.html>, interviews with Media General personnel in market.

- Time Warner Myrtle Beach and Florence System lineups indicate carriage of government access channels.
  - Myrtle Beach also shows leased access, religious access, educational access, public access
- Channel 148 in Myrtle Beach (and others) – Bobcats channel carrying Charlotte Bobcats NBA games<sup>36</sup>
- “Coastal Today” weekly 30-minute program produced by Coastal Carolina University and available on Time Warner and Horry Telephone Cooperative Educational Access channels – discusses University issues<sup>37</sup>
- Religious programming also offered on local access channels - “Real Life Church” – Monday afternoons, Friday evenings<sup>38</sup>

### Columbus, Georgia

- Fox Sports Net South
- Troy University Television<sup>39</sup>
  - Programming includes TrojanVision Nightly News, airing weeknights at 5 with rebroadcasts at 6:30 and 10:30 pm; also TrojanVision News at Noon, weekdays at noon during school year<sup>40</sup>
  - Also covers local athletic events, concerts and other locally produced programs
  - Received in Columbus (Knology, Charter), Phenix City (Cable TV of East Alabama a/k/a Phenix City)<sup>41</sup>
- Columbus Consolidated Government Television – carried on Knology, Charter, Mediacom systems<sup>42</sup>
  - Offers public meetings, as well as some pre-recorded programming<sup>43</sup>
    - CCG-TV Newswatch – local in-depth government news program (recorded twice monthly)
    - Columbus Connection – allows local non-profit organizations opportunity to address local issues

<sup>36</sup> [http://www.nba.com/bobcats/Bobcats\\_Broadcasting-128276-443.html](http://www.nba.com/bobcats/Bobcats_Broadcasting-128276-443.html)

<sup>37</sup> <http://www.coastal.edu/media/coastaltoday.html>

<sup>38</sup> See <http://www.pastorfrank.com/rlc.html>

<sup>39</sup> <http://wtsu.troy.edu/television/index.html>

<sup>40</sup> <http://wtsu.troy.edu/television/student-news.html>

<sup>41</sup> <http://wtsu.troy.edu/television/channel.html>

<sup>42</sup> <http://www.columbusga.org/ccg-tv/>

<sup>43</sup> <http://www.columbusga.org/ccg-tv/Programs.htm>

### Panama City, Florida

- Sunshine Sports (see above)
- Gulf Coast Community College (GCCC-TV)<sup>44</sup>
  - Educational programming, sporting events, “First Air Force News,” classic arts programming<sup>45</sup>
- Bay District Schools Instructional Television (shares channel with GCCC-TV)<sup>46</sup>
  - School Board Meetings, as well as teacher training videos and other educational programming
- Comcast offers Weatherscan Local (sharing with City Council) on Panama City system
- Cox System<sup>47</sup>
  - Carries between 35-40 hours of local origination per week
  - Carries government meetings, public officials’ programs, local high school sports, including football playoffs
  - Carries student academic tournaments
  - Carries programs of Okaloosa-Walton College – “OWC Outlook” and “Raiders Sports Beat”
  - Carries 30-minute weekly program from University of West Florida
  - Carries GulfCoast TV (classifieds)

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<sup>44</sup> <http://instadv.gulfcoast.edu/communityresources.htm>

<sup>45</sup> <http://dept.gulfcoast.edu/whr801/>

<sup>46</sup> <http://www.bay.k12.fl.us/divisions/techinfo/bdims/html/itv/index.html>

<sup>47</sup> Interview with local Cox Cable representative David Delamin on August 2, 2006.